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# THE SOUTHWESTERN POLITICAL AND SOCIAL SCIENCE QUARTERLY

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# THE SOUTHWESTERN POLITICAL AND SOCIAL SCIENCE QUARTERLY

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## SLAVERY AND THE AMERICAN DOCTRINE OF EQUALITY

BY T. V. SMITH

*University of Chicago*

The heroic attempt of Thomas Jefferson in the first draft of the Declaration of Independence to hold the English throne responsible and censurable for slavery in America was frustrated by some of his southern colleagues. So also any explicit policy regarding slavery was found impracticable in the convention that framed the Federal Constitution. Unanimity enough to formulate the Constitution and to get it adopted was found possible only by means of golden silence upon this most ungilded subject. But smothered or clamorous, the institution of slavery was destined to continue, as it had already become in Jefferson's own mind, the more or less openly recognized challenge, not to say practical refutation, of the doctrine of natural human equality. It is of more than historic interest and value to reconstruct for ourselves the philosophy for and against slavery.

### I

There is no doubt that slavery was very early recognized as the foe of American ethical aspiration. The earliest statute among the colonies for the suppression of slavery, significant even if not enforced, was one passed in Rhode Island in 1652.<sup>1</sup> Perhaps the earliest pamphlet issued in America against slavery was one by George Keith, a devout Quaker (about 1693),

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<sup>1</sup>*Rhode Island Records*, I:248.

in which he charges his religious denomination "that they should set their negroes at liberty, after some reasonable service."<sup>2</sup> Another early tract against slavery was printed by Samuel Sewall, Judge of the Superior Court of Massachusetts, in 1700, entitled "The Selling of Joseph, a Memorial."<sup>3</sup> From this time on pamphlets too numerous to mention never ceased to appear upon slavery, being chiefly against the institution.

Following the organization by the Quakers at Philadelphia of their society in 1775, the New York "Society for Promoting the Manumission of Slaves" was organized in 1785;<sup>4</sup> the Delaware society in 1783; the Maryland and Rhode Island societies in 1789; the Connecticut society in 1790; the Virginia society in 1791; and the New Jersey society in 1792.<sup>5</sup> These eight state organizations and two of the many local societies organized in the various states held their first annual convention at Philadelphia in 1794, at which through a joint memorial to Congress they had the use of vessels and men in the slave trade declared a penal offense.<sup>6</sup>

These societies continued to multiply until in 1827, four years before Garrison started his *Liberator*, an event that is popularly supposed to mark the real beginning of agitation for abolition, there were 130 in the United States, 106 of which

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<sup>2</sup>His denomination never turned back from the direction thus early pointed out for them. Their annual query in 1743 and again in 1755 inquired whether their members were clear of importing or buying slaves. In 1758 those who disobeyed this injunction were placed under discipline, and with the coming of the Declaration of Independence, 1776, those who continued to hold slaves over lawful age were disowned. Not only did they seek to regulate and then to abolish slavery among themselves, but at Philadelphia in 1775 they organized the first anti-slavery society in America, devoted at first to the relief of free negroes but later (1787), with Benjamin Franklin as its president and Benjamin Rush as its secretary (both of whom were signers of the Declaration of Independence), to the abolition of slavery as well.

<sup>3</sup>Reprinted in Moore, *Notes on Slavery in Massachusetts*, p. 83.

<sup>4</sup>A society having John Jay as its first president and Alexander Hamilton as his successor, and offering, in 1787, a gold medal for the best discourse against slavery to be delivered at public commencement of Columbia College.

<sup>5</sup>The London abolition society was organized in 1787; the Paris society in 1788.

<sup>6</sup>Poole, *Anti-Slavery Literature before 1800*, p. 59.



were in the slave-holding states. The growth of the movement represented by these societies was persistent, though not steady, for there was a great reaction against the abolition movement upon the invention by Eli Whitney of the cotton gin in 1793, and again in 1830 upon the Southampton insurrection and insurrections threatening in South Carolina during the same year.

Whatever the specific arguments used at various times, and here of course there was variety, the fundamental appeal common to all the abolition societies was the doctrine of human equality. The slaves, who were actually unequal with the whites in so many regards ought to be treated as equal in certain important respects, because they actually were equal by nature in other more fundamental ways. The sanctions on which they relied to sustain this appeal were, indiscriminately, nature and God. The challenge which is implied in that vast difference between the declaration of the Connecticut Constitution (1818) "that all men, when they form a social compact, are equal in rights" and the declaration of the constitutions of Mississippi (1817) and Alabama (1819) "that all *freemen*, when they form a social compact, are equal in rights," was consistently met face to face by the ancient doctrine that men and freemen are, in all that makes them *men*, equal and that therefore they ought to be treated equally.

The preamble of the first anti-slavery society in America, the Quaker organization at Philadelphia, sets out clearly that the two sanctions on which they relied were "the rights of human nature" and "the obligations of Christianity." Their field they took to be the world but an unmistakable ministry they owed "in a more particular manner to such of their fellow-creatures as are entitled to freedom by the laws and constitutions of any of the United States, and who, notwithstanding, are detained in bondage by fraud or violence." From a full conviction of the truth and obligation of these principles, they set out to make the natural rights of men effective.<sup>7</sup> Even more explicitly does the Maryland society fall back upon the doctrine enunciated in the Declaration of Independence. The preamble declares that "the common Father of mankind created all men free and equal. . . . The

<sup>7</sup>Needle, *Memoir*, p. 30, quoted from *Poole*, p. 42ff.

human race, however varied in color or intellects, are all justly entitled to liberty; and it is the duty and the interest of nations and individuals . . . to remove this dishonor of the Christian character from amongst them."

In the same vein, but with more sardonic reference to the inconsistency between American theory and practice, is a pamphlet published in 1783 "By a Farmer in London," but widely circulated in America. The full title is "A Serious Address to the Rulers of America, on the Inconsistency of their Conduct respecting Slavery; forming a contrast between the encroachments of England on American liberty, and American injustice in Tolerating Slavery." This unknown writer gets a grim satisfaction out of arraying in opposite columns "the speeches and resolutions of the members of Congress in behalf of their own liberty, with their conduct in continuing the slavery of others."<sup>8</sup>

There was not needed, of course, a foreign critic to bring home the sting of this inconsistency. Jefferson was not by any means the only American who was painfully aware of this discrepancy. It is noteworthy that the early abolition of slavery in Massachusetts was not brought about either by executive proclamation or by statute, but apparently<sup>9</sup> by a general declaration of equality. At any rate, the testimony of Chief Justice Shaw upon the point so indicates. "How, or by what act particularly," says he, "slavery was abolished in Massachusetts, whether by the adoption of the opinion in *Somerset's* case as a declaration and modification of the common law, or by the Declaration of Independence, or by the Constitution of 1780,<sup>10</sup> it is not now very easy to determine: it is rather a matter of curiosity than utility, it being agreed on all hands that, if not abolished before, it was by the declaration of rights."<sup>11</sup> Massachusetts was not alone in reading very concrete meaning out of a general expression of equality

<sup>8</sup>Quoted from *Poole*, p. 8n.

<sup>9</sup>Dr. Belknap thought that the general equality clause was inserted into the Massachusetts constitution of 1780 for the express purpose—generally understood so by the people—of freeing the negroes on a general principle. (Tucker, *Dissertation of Slavery*, p. 203.) But there is dissent from this view of the matter. (*Poole*, p. 5n.)

<sup>10</sup>That is, by the general equality clause in it.

<sup>11</sup>*Pickering*, 209. (Quoted from *Poole*, p. 55ff.)

as is contained in the Declaration of Independence. The similar declaration of the New Hampshire Constitution that "all men are created equally free and independent" was construed to mean that all persons *born* after 1784—the date of the adoption of the constitution—were equally free and independent. A similar declaration, however, in the constitution of Virginia proved but a phrase of glittering ornament without legal meaning.

This same natural rights and religious motif is emphasized by the proceedings of the first national convention of the anti-slavery societies, held at Philadelphia in 1794. Two documents of great interest emerged from this first meeting. The first has already been referred to as a petition to Congress to stop the slave trade. The second was an address "To the Citizens of the United States," written by Dr. Benjamin Rush and adopted by the convention. The religious sanction is most heavily emphasized here. "Domestic slavery," the address declares, "is repugnant to the principles of Christianity. . . . It is rebellion against the authority of a common Father. It is a practical denial of the extent and efficacy of the death of a common Saviour. It is an usurpation of the prerogative of the Great Sovereign of the Universe, who has solemnly claimed an exclusive property in the souls of men." The address closed with a portentous view of the punishment that God might send—yea, in the form of Indian raids, etc., was already sending—upon a perverse generation.<sup>12</sup>

But if this appeal addressed to the public at large naturally emphasized the religious sanction—becoming a sort of call to national repentance—appeals presented to Congress just as naturally emphasized the more distinctively political sanction. This is clearly seen in memorials presented to the House of Representatives December 8, 1791, from societies in six states. The Memorial from Pennsylvania, for example, declares: "We wish not to trespass on your time by referring to the different declarations made by Congress, *on the unalienable right of all men to equal liberty*; neither would we attempt in this place to point out the inconsistency of extending freedom to a

<sup>12</sup>Poole, pp. 62-3n.

part only of the human race."<sup>13</sup> The memorialists from Virginia not only believed "that slavery is . . . an odious degradation but an outrageous violation of one of the most essential rights of human nature," but they also "lament that a practice so inconsistent with true policy and the *unalienable* rights of men, should subsist in an enlightened age and among a people professing that all mankind are by nature equally entitled to freedom."<sup>14</sup>

As the abolition movement under the leadership of Garrison gathered national strength and became genuinely formidable, it carried with it every shade of opinion from the most erratic philosophy of the anarchistic "come-outers" to the program of Lincoln. Amid a bewildering variety of opinions, the one point of agreement was, as Merriam points out, "the belief that all men are created equal, and are endowed with certain natural rights which must everywhere be respected."<sup>15</sup> Lincoln limited the equality doctrine in thoroughly practical ways, but remained steadfast in the belief that this is "a nation dedicated to the proposition that all men are created equal." Garrison mixed with his philosophy the extravagant enthusiasm of an irresistible evangelism, but his unshakable foundation was a human equality founded on nature and sponsored by God himself. Dr. Wayland, the scholarly President of Brown University, whose *Elements of Moral Science* (1835) enjoyed an amazing popularity, appeals to Jefferson's general equality clause in the Declaration of Independence as a fit summary of his philosophic case against slavery.<sup>16</sup> But it remained for Channing, who used with equal facility the philosophic and religious emphasis, to drive home the arguments that sounded familiar and dear to American ears.

Man has rights by nature. The disposition of some to deride abstract rights, as if all rights were uncertain, mutable, and conceded by society, shows a lamentable ignorance of human nature. . . . These are gifts of the Creator, not grants of society. In the

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<sup>13</sup>Drawn up and signed by Benjamin Franklin, President of the society. This was his last public act. (*Annals of Congress*, I:1239.)

<sup>14</sup>*Ibid.*, I:1239.

<sup>15</sup>Merriam, *American Political Theories*, p. 226.

<sup>16</sup>Fuller and Wayland on *Slavery*, pp. 33-4.

order of things they precede society, lie at its foundation, constitute man's capacity for it, and are the great objects of social institutions. The consciousness of rights is not a creation of human art, a conventional sentiment, but essential to and inseparable from the human soul.<sup>17</sup> The equality of nature makes slavery a wrong.<sup>18</sup>

This persistence with which all varieties of reformers rested the case against slavery on natural rights, with especial emphasis upon equality, made it, as Thomas Paine had earlier indicated in another connection, very difficult for them to be beaten out of their argument.

## II

Of this stubborn fact the defenders of slavery became increasingly aware. Though they ended by doing so, the proponents certainly did not begin by denying the natural equality of men. The hold of the doctrine even in the first half of the nineteenth century in America was too strong for that. They felt with Channing that slavery "involves the gravest questions about human nature and society," but the issue had to become desperate indeed before they sought to answer these questions by a sweeping denial of this most fundamental tenet of American traditions. However it may have been chronologically, the logical steps by which the South passed from uncomplaining acceptance to belligerent rejection of the equalitarian sentiment of the Declaration of Independence are writ large on the pages of such a compilation as *Cotton is King, and Pro-Slavery Arguments*.<sup>19</sup> The process of this transformation is worth reconstructing.

By common consent slavery was regarded in early colonial America as an evil, for the most part an *unnecessary* evil,

<sup>17</sup>*Slavery*, p. 31.

<sup>18</sup>*Ibid.*, p. 19.

<sup>19</sup>Edited by E. N. Elliott, President of Planters' College in Mississippi. Every angle of the South's case is presented by various gifted and representative men who sympathized with the slavery cause. The compilation was published in 1860, but the essays themselves, representing various stages of the controversy, reveal not only the slavery case on the eve of the Civil War, but the process through which the case had been formulated.



chargeable to the Mother Country. Even the colonies that later became slave-defending states had gone on record as desiring the slave trade stopped. So long as this view prevailed—and it certainly outlived the colonial period—the only question was *when* and *how* to abolish slavery so as to produce the minimum harm to all concerned. But so difficult did this practical question prove that its settlement was postponed until the question began to change to the more gravid one of *whether* and *why*. With the gradual isolation of slavery in the South a certain sectional difference of opinion grew up: those regions where slavery had not proved economically profitable retaining the view that the institution was an *unnecessary* evil, those regions where slavery was proving more and more profitable gradually approaching the view that it was a *necessary* evil. This conclusion was facilitated by the fact that the negroes had in the interim become so numerous that deportation after long and generous discussion had generally been decided impossible, state payment for them at prevailing prices inexpedient if not economically out of the question, and emancipation without full reimbursement to owners an open infringement of constitutionally guaranteed property rights.

So far the doctrine of fundamental equality had not been seriously questioned.<sup>20</sup> Professor Bledsoe, of the University of Virginia, indeed<sup>21</sup> declared that the slave had rights, even inalienable rights; and as regards the *one* right whose importance completely overshadows all others—"the right to serve God according to one's own conscience"—there is actual and blessed equality: "the poorest slave on earth possesses this right—this inherent and inalienable right; and he possesses it as completely as the proudest monarch of his throne."<sup>22</sup> The master "demands no spiritual service of him, he exacts no divine honors."<sup>23</sup> And one "might point out other respects in

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<sup>20</sup>*Cotton is King*, p. vii.

<sup>21</sup>*Ibid.*, p. 287.

<sup>22</sup>*Ibid.*, p. 329.

<sup>23</sup>*Cotton is King*, p. 314. With this panegyric of Bledsoe's it is instructive to contrast Cartwright's remark that "a discreet white man or woman should always be present to regulate their religious meetings," (*ibid.*, p. 728), and the rule of the negro church to which Cotton Mather's

which men are essentially equal, or *have equal rights*," if he were writing "a treatise on the philosophy of politics."<sup>24</sup> It was not, then, that the *fact* of equality was being denied, but rather that, in order not to "deny the great differences that exist among men"—as some were doing whose zeal, as he declared, outran their knowledge—some discrimination were needed.<sup>25</sup> The period of assertion without definition has passed into the period of definition with varying degrees of assertion.

All admitted that some limitation of individual rights was necessary and just: a felon might justly be deprived of his liberty and a murderer of his life. The question was on what principle was the limitation to be based. That question once settled, rights and benefits could be distributed justly, whether the distribution were always equal or not. Montesquieu was quoted to show that "though real equality be the very soul of democracy," yet even "equality in a democracy may be suppressed for the good of the state."<sup>26</sup> "The good of the state"—ah, there is the needed touchstone of justice! "It is the *duty*, and consequently, the *right*, of society to make such law as the general good demands."<sup>27</sup>

Take that fundamental principle seriously, maintain it consistently, and there need be no further difficulty about rights. "All individual rights are subordinate to this inherent, universal, and inalienable right" (and duty) of society to make the general good supreme.<sup>28</sup> The most sacred right that any one—slave or free—can have is the right to do his duty, and the duty of all alike is "to promote the general welfare." Even William Ellery Channing in his argument against slavery—as Professor Bledsoe with pleasure indicated—had declared that the slave, "like every citizen . . . is *subject to the community*, and the community has a right and is bound to continue all such restraints as its own safety and the well-

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slave belonged, a rule which declared, "Our coming to the Meeting shall never be without the *Leave* of such as have power over us." (Weeden, *Economic History of New England*, 2:450.)

<sup>24</sup>Cotton is King, p. 331.

<sup>25</sup>*Ibid.*, p. 331.

<sup>26</sup>*Ibid.*, p. 335.

<sup>27</sup>*Ibid.*, p. 288.

<sup>28</sup>*Ibid.*, p. 228.

being of the slave demands."<sup>29</sup> "Now this," as the writer continues, "is all we ask in regard to the question of equal rights. All we ask is, that each and every individual may be in such wise and so far restrained as the public good demands and no further."<sup>30</sup> Thus, as Bledsoe is at pains to remark, "it may be clearly shown that the doctrine of inalienable rights, if properly handled, will not touch the institution of slavery."<sup>31</sup>

Since, then, the good of all is paramount to the welfare of any, it only remained to indicate how slavery served the common good. This was shown by the fact that slave labor was the indispensable means to the production of sufficient cotton (not to mention tobacco) to supply the minimum needs of mankind.<sup>32</sup> Corroboration for this line of argument was found in the fact that anti-slave states and even abolitionists themselves continued to receive cotton and to use cotton products.<sup>33</sup> Surely they would not be guilty of such an inconsistency were cotton not indispensable to a good life! Verily, Cotton had become King, and slaves were his gracious subjects, serving mankind as they did his bidding!

So inevitably does rationalization work to provide compensations that the conception of a *necessary evil* bears within it the seeds of its own destruction: the conviction that slavery was necessary worked gradually to dissipate the conviction that it was evil. Cotton alone would have justified slavery on the greatest happiness principle; but there were many other compensations. Professor Dew gave slavery credit for having produced among the whites of the slave-holding states as nearly a "perfect spirit of equality . . . as can be expected

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<sup>29</sup>*Cotton is King*, p. 328.

<sup>30</sup>*Ibid.*, p. 328.

<sup>31</sup>*Ibid.*, p. 286.

<sup>32</sup>No other means had been *demonstrated*, so the argument ran; and the failure of England's attempt to produce cotton in India with free labor made it seem logical to conclude that slave labor is indispensable. The only question, then, that remained was thought to be whether the slaves should labor in the South for the benefit of America or whether they should labor in Africa to the benefit of England, who controlled most of Africa and would fast be compelled to reduce natives to slaves for the production of cotton, once slavery were abolished in the South. (*Cotton is King*, especially ch. XII.)

<sup>33</sup>*Cotton is King*, pp. 213, 214.

or even desired in this world." And that were, thought he, no small tribute; for "it is this spirit of equality which is both the generator and preserver of the genuine spirit of liberty."<sup>84</sup> Governor Hammond of South Carolina, in the same sentence in which he "repudiates, as ridiculously absurd, that much lauded but nowhere accredited dogma of Mr. Jefferson that 'all men are created equal,' . . . endorses without reserve the much abused sentiment of Governor McDuffie, that slavery is the cornerstone of our republican edifices."<sup>85</sup> These ringing tributes from eminent men prepared the way for Chancellor Harper's cautious but unequivocal statement that, though slavery "was forced on us by necessity, and further fastened upon us by the superior authority of the Mother Country . . . I for one, neither deprecate nor resent the gift."<sup>86</sup>

### III

When to the many mitigations of slavery among a cultured people were added these weighty compensations, the end not only justified the means but seemed in a good way to sanctify it as well. While logic could be satisfied with less, sentiment<sup>87</sup> demanded that, while promoting the general welfare, even slaves should not have to sacrifice their own individual good. Though some in this matter emphasized "a little good sense and practical sagacity," rather than "abstractions alone," still if slavery were to be sanctified, sentiment must needs be satisfied. This satisfaction came about through the discovery that *slavery is for the good of the slave*.

So certain did the apologists for slavery feel regarding that proposition that Professor Bledsoe is not unrepresentative in declaring that "if, on the whole, the institution of slavery be

<sup>84</sup>Dew, *Pro-Slavery Arguments*, pp. 261-2.

<sup>85</sup>*Ibid.*, p. 109.

<sup>86</sup>*Cotton is King*, p. 570.

<sup>87</sup>The tremendous appeal of *Uncle Tom's Cabin* made it necessary for the South to fight sentiment with sentiment. A survey of the literature of the time shows that it rose to the demand. "Besides the numerous controversial pamphlets and articles in periodicals there were no fewer than fourteen pro-slavery novels and one long poem published in the three years (1852-4) following the appearance of *Uncle Tom's Cabin*." (Jeannette Reid Tandy, "South Atlantic Quarterly," 21:41-50.)

a curse to the slave, we say let it be abolished."<sup>38</sup> For "no fact is plainer," thought he, "than that the blacks have been elevated and improved by their servitude in this country. We cannot possibly conceive, indeed, how Divine Providence could have placed them in a better school of correction."<sup>39</sup> Servitude, as the South thought, had taught thrift to the thriftless, kindness to the brutal, industry to the lazy, morals to the immoral. Slavery was as beneficial to the slave as to civilization in general. It supported him in childhood and old age, it protected him from poverty, it saved him from himself. Ignorance with all its train of vices was subject to constant remedy. That the whole moral level of the negroes was raised by their being kept in servitude, Professor Christy sought to show by a statistical computation of the comparative criminality of the free negroes in America with the slaves. The advantage was greatly in favor of the latter.<sup>40</sup>

While these so-called temporal benefits were wholly in favor of slavery as a civilizing agency, they were as nothing compared to the spiritual advantages the slave enjoyed by being in America. As eternal salvation was superior to temporal amelioration, so did the christianization of the negro put in the shade all other concern regarding him. And it was in this most important matter that slavery scored highest. Missionaries sent at much expense to Africa labored long and hard merely to overcome the hostile milieu of an alien atmosphere. In America the slave just naturally grew up to be a Christian. Christy's study of the statistical compilations of the churches themselves revealed "that the number of slaves brought into the Christian Church, as a consequence of the introduction of the African race into the United States, exceeds all the converts made, throughout the heathen world, by the whole missionary force employed by Protestant Christendom."<sup>41</sup> It appeared thus cheaper and far more effective to bring the African to the missionaries rather than to send the missionaries to him, and all the more so because while having his soul saved for heaven, he was both becoming civilized

<sup>38</sup>*Cotton is King*, p. 297.

<sup>39</sup>*Ibid.*, p. 416.

<sup>40</sup>*Ibid.*, p. 39.

<sup>41</sup>*Ibid.*, p. 166.



through his social contact and educated through his work and also doing a good part by the world in supplying tobacco and cotton. While this many-sided benefit was not urged as an apology for bringing more Africans to America, still as regarded those already present it was exploited for all its worth in defending slavery as an example of "the mode in which Divine Providence is working for the salvation of the African race."<sup>42</sup>

Thus did the South come to its desired goal. The intrinsic difficulties of dealing with this inherited institution became insurmountable when seen in the seductive coloring of economic advantage. Economic advantage begot cultural compensations. Cultural compensations conjured up humanitarian mitigations. Logical justification followed. And a certain spiritual sanctification crowned the whole. Slavery had through the metamorphosis of a century changed from an *unnecessary evil* into a *positive good*.

#### IV

This conclusion, that slavery was a positive good, though warranted by the premises of the later pro-slavery arguments, was with reluctance explicitly drawn. Inherited political philosophy furnished for thought a limiting condition not easily overcome. But under the provocation furnished by the battle cry of the later abolitionists, that slavery was *malum in se* and that consequently slave-holders, were criminals, Calhoun, the fiery statesman of the South, rushing in where more cautious students preferred not to tread, countered with the doctrine that the South's "peculiar institution" was *bonum in se*.

It has appeared that the conclusion that slavery is good rather than evil could be reached—and was in many cases reached—without denying that all men are in some fundamental ways actually equal. True, careful discrimination was necessary to insure the proper qualifications, as Professor Bledsoe indicated;<sup>43</sup> but, as Christy and Cartwright both

<sup>42</sup>*Ibid.*, p. 166.

<sup>43</sup>*Ibid.*, p. 319ff.

showed,<sup>44</sup> no one supposed that Jefferson or any other of the Revolutionary fathers meant the doctrine to be taken *without any qualification*. Nevertheless, there were disadvantages to resting the defence of slavery on this basis. Even though on the foundation of a carefully defined natural equality slavery might be proved a positive good, could it thus be proved a permanent good? Subjection of children may be made to appear good—but only while they remain children. If slavery was as effective in civilizing and christianizing the negroes as the arguments implied, then, as regards the blacks, its ministry would eventually abolish its mission: the slave would outgrow the logic of slavery. Reacting perhaps as much to the relentless way in which the abolitionists pressed home this perturbing fact as to the observed inferiorities of slaves, Calhoun cut the Gordian knot by denying that men are naturally equal—a denial that among other things meant that negroes *could not grow into equality with their masters*. Still accepting nature as a norm, he opposed the doctrine of natural equality the dogma of *natural inequality*.

This radical departure of Calhoun's was given official recognition in the formation of the constitution for the Southern Confederacy. Alexander H. Stephens, Vice-President of the Confederacy, in a notable speech delivered at Savannah, Georgia, shortly after the adoption of the new constitution, sets out fearlessly and without reservation the Southern position.

Jefferson, in his forecast, had anticipated African slavery as "the rock upon which the old Union would split." He was right. . . . The prevailing ideas entertained by him and most of the leading statesmen at the time of the formation of the old Consitution were, that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. . . . Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. It was a sandy foundation, and the idea of a Government built upon it—when the "storm came and the wind blew, it fell."

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<sup>44</sup>*Ibid.*, pp. 43, 984.

Our new Government is founded upon exactly the opposite ideas; its foundations are laid, its cornerstone rests, upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition. Thus, our new Government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth. . . . They were attempting to make things equal which the Creator had made unequal. . . . The negro by nature, or by the curse against Canaan, it fitted for that condition which he occupies in our system. . . . It is, indeed, in conformity with the Creator. It is not for us to inquire into the wisdom of His ordinances or to question them. . . . For His own purposes He has made one race to differ from another, as He has made "one star to differ from another in glory." . . . This stone which was rejected by the first builders "is become the chief stone of the corner" in our new edifice.<sup>45</sup>

Nature had served Anglo-Saxons from Locke to Calhoun's day as an instrument of offence; but nature is no respecter of persons or causes. The South's need, like that of Hobbes, was for a weapon of defence. Calhoun, who argued the question at most length, appealed first to the obvious facts about him: no two persons seem to be equally endowed. There are on every hand, not only diversities, but gross inequalities between the talents as between the possessions of men. And no mitigation of this observed inequality could be found by appealing to earlier time. The most obvious form of this appeal to the past has been that, while men are not now equal, they were *born* equal. To this Calhoun replied that "men are not born. Infants are born. They grow to be men."<sup>46</sup> And infants are no more equal—except perhaps in helplessness—than are men. "Nothing can be more unfounded and false," declared Calhoun, than "the prevalent opinion that all men are born free and equal."<sup>47</sup> So obvious is the falsity of the belief, so demonstrable by an appeal to facts that are everywhere and to all men easily accessible, that it could never have been held either that men are equal or that they are born equal had it not

<sup>45</sup>Moore (ed.), *The Rebellion Record*, Vol. ID, pp. 44-49.

<sup>46</sup>*Works*, I:56.

<sup>47</sup>*Ibid.*, I:57.

rested upon a theory the disproof of which could not so easily be established. Calhoun states his case very clearly. This belief that men are born equal, he declared—

rests upon the assumption of a fact, which is contrary to universal observation, in whatever light it may be regarded. It is, indeed, difficult to explain how an opinion so destitute of all sound reason, ever could have been so extensively entertained, unless we regard it as being confounded with another, which has some semblance of truth;—but which, when properly understood, is not less false and dangerous. I refer to the assertion, that all men are equal in the state of nature.<sup>48</sup>

Having reduced the claim of equality from men to babes and from babes to a hypothetical state of nature, Calhoun proceeds unsparingly to expose the insufficiency of this traditional view. There had never been, thought Calhoun, sufficient proof given or sought of the actual existence of any such state of nature. He did not see that the same motivation for his rejection of the view had formerly guaranteed its acceptance, in each case operating alike to strengthen the scanty proof and to weaken the observable disproof. It was foregone that when as strong motivation for denial should arise as there had been historically for affirmation, then either bolstering cases would be found to support the denial or, that proving impossible, the burden of proof would be pressed where it logically belonged, on those who affirmed. And now that Calhoun had the motivation, he pressed upon the proponents of the accepted philosophy of equality both their lack of positive proof and his own negative arguments. He first drove home the fact, in itself destructive of confidence, that "*such a state is purely hypothetical.*"<sup>49</sup> But not only so: such a state of nature not only never did exist, but never could have existed. There are two reasons why it could not have existed—the one racial, the other individual. Such an hypothesis is not compatible "with the preservation and perpetuation of the race." With its long infancy of complete helplessness, the human child must, in order to survive, be born into a group. And this very fact—as necessary at the

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<sup>48</sup>*Ibid.*, I:57-58.

<sup>49</sup>*Ibid.*, I:60.

earliest hypothetical time as now—from the nature of the case, it must be remembered, meant inequality of the most significant kind, an inequality of master and subject. But this racial argument was also buttressed by an appeal to individual psychology. Calhoun perceived that man is not wholly selfish, as the eighteenth century supposed. The state of nature, from which men through a social compact were supposed to have emerged into government, followed logically from the egoistic conception of human nature. Seeing that natural equality was but a part of the larger natural law philosophy inherited from the eighteenth century, and earlier, Calhoun challenged the whole traditional idea-system. So far from being solitary and selfish by nature declared Calhoun,—

. . . man is so constituted, as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; and he has, accordingly, never been found, in any age or country, in any state other than the social. In no other, indeed, could he exist; and in no other—were it possible for him to exist—could he attain to a full development of his moral and intellectual faculties, or raise himself, in the scale of being, much above the brute creation.<sup>50</sup>

Thus does man's very nature combine with his helplessness to make the social state both necessary and natural. Such a condition of independence as the accepted hypothesis described was utterly foreign, then, to the social instincts of men. It was, therefore, thought Calhoun—

A great misnomer to call it *the state of nature*. Instead of being the natural state of man, it is, of all conceivable states, the most opposed to his nature—most repugnant to his feelings, and most incompatible with his wants. His natural state is, the social and political—the one for which his Creator made him, and the only one in which he can preserve and perfect his race. As, then, there never was such a state as the, so-called, state of nature, and never can be, it follows, that men, instead of being born in it, are born in the social and political state, and of course, instead of being born free and equal, are born subject, not

<sup>50</sup>*Ibid.*, I:1-2.



only to parental authority, but to the laws and institutions of the country where born, and under whose protection they draw their first breath.<sup>51</sup>

As completely, then, as a little observation dispels the absurd notion that men *are* equal, a little honest reflection dispels the more absurd hypothesis that men in some remote antiquity actually emerged from some pre-social state in which they *were* equal. Nor did one reach a better end by taking the theological route. Men were not any more *created* equal than they were *born* equal. To fortify his position on this point, Calhoun argued that God did not create all races of men from one stock, but that there had been a plurality of origins and that the negro belonged to one of the primordial varieties of men.<sup>52</sup> But that hypothesis aside, the surest way to find out how men were created was to ascertain how men actually compared. The negro had from time immemorial found his place as hewer of wood and drawer of water for more favored races, even as Scripture had foretold. The verdict of God as to the equality of the negro could best be read in the history of mankind, and as regarded the natural place of the negro, the verdict was thought to be unmistakable. Dr. Cartwright had found this same verdict written in the skull of the negro. And so he declared that "the same ordinances which keeps the spheres in their orbits and holds the satellites in subordination . . . subjects the negro to the empire of the white man's will."<sup>53</sup> And since God made him inferior, "subordination of the inferior race to the superior is a normal, and not a forced condition."

Such, then, was the case for slavery as regarded observation, science, and logic. As regarded *argumentum ad vericundiam*—a species that perhaps carried more weight then than now—Calhoun and his colleagues seem to have felt no lack. It is true that they could not appeal quite so proudly as their op-

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<sup>51</sup>*Ibid.*, I:1-2.

<sup>52</sup>See Riley, *American Thought*, p. 182. Dr. Cartwright, the Southern ethnologist, while disclaiming disagreement with Saint Paul, nevertheless held that "the species of the *genus homo* are not a unity, but a plurality, each essentially different." The negro is the lowest of all the species. (*Cotton is King*, p. 707ff.)

<sup>53</sup>*Cotton is King*, p. 721.

ponents to the American father or to the great names in English tradition—Harrington, Milton, Locke, Hobbes, Blackstone—but they held undisputed possession of one the magic of whose name out-conjured the influence of scores of lesser men. With complete confidence they could turn to Aristotle; for his defence of slavery was frank, profound, and ever fresh. Calhoun regarded Aristotle with reverence, and used the authority of his great name.<sup>54</sup> Nor did the defenders of slavery feel it a disadvantage when appeal was made to the Bible, the greatest source-book of the time. Both sides, of course, claimed its authority. And while each side, by judicious selection of texts, made out a case as satisfactory to itself as it was unconvincing to the other, nevertheless the Bible came to be appealed to with greater confidence, an unbiased reader is likely to feel, by the pro-slavery speakers and writers. The abolitionists, in appealing to the Bible, were at the disadvantage of having to rely more upon its *general* teaching and tendencies—a roundabout method that had weight with certain forward-looking people but a method that could not easily be reduced to syllogism or adapted to victory in polemics. Partly, no doubt, because of this disadvantage they tended at times to interpret the Bible very freely, at times to ignore it, and still at other times, in a pinch, to contradict it altogether. This compromised the case of the abolitionists in many devout minds, and was of course made capital of by Southern writers.<sup>55</sup>

Apologies for slavery on the other hand, had the most explicit injunctions and precedents. The Old Testament "Friend of God" was himself a slave-owner. Slavery was authorized among the Jews. Jesus, and his apostles after him, had found slavery in their day, had recognized its existence, and had given rules for its regulation. They had never unequivocally spoken against the institution. Saint Paul had returned Onesimus, a fugitive slave, to his master, and had, in his pastoral letters, uniformly enjoined upon Christian

<sup>54</sup>Calhoun, *Correspondence*, p. 469 (letter to A. D. Wallace, 1840).

<sup>55</sup>*Cotton is King*, p. 337ff. Cf. also the appraisal by the Reverend Frederick Ross of the liberty and equality appealed to by the North: "every word of it, every jot and tittle, is the liberty and equality claimed by infidelity. God has cursed it seven times in France since 1793." (*Slavery Ordained of God*, published at Philadelphia, 1857, p. 105.)

slaves obedience to masters as a religious duty. An institution that had had a place among God's chosen people from the beginning to the close of their sacred history, that had always been recognized, never condemned, and frequently regulated by those who were accepted as divine spokesmen,—such an institution, Southern writers felt, had nothing to fear from any hermeneutics accepted in their day.<sup>56</sup> With the Bible and Aristotle on their side—a combination that had once been long invincible—they felt secure so far as arguments from authority were concerned.

## V

Calhoun's refutation of natural human equality and of the whole state-of-nature philosophy inextricably connected with it was of the utmost significance. The fact that he dedicated his analysis to the defence of an institution that was shortly to be violently overthrown has obscured the tremendous force of the arguments with which he justified his denial of natural equality. It was his peculiar fortune while losing his case to win his cause. That following the Civil War no American political philosopher of note has defended the theory of human nature and of society that he attacked is an unquestioned tribute to Calhoun and to those for whom he spoke. It indicates either that the weight of his arguments was greatly influential in turning the current of American thinking, or, what is more probable, that his was the voice through which a winning, but hitherto inarticulate, philosophy found its initial expression on this continent.

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<sup>56</sup>So available and effective was the biblical argument that hardly a defender of slavery failed to try his hand at it. The best defence, perhaps, is to be found in the letters of the Reverend Richard Fuller (*Fuller and Wayland on Slavery*) and in Dr. Stringfellow's article in *Cotton is King* (pp. 461ff).

## TRUTH AND POLITICS: AN ESTIMATE OF THE PLACE OF PARTIES AND THEIR DUTY IN PROMOTING FAITH IN DEMOCRATIC GOVERNMENT

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The Prime Minister of England, Mr. Stanley Baldwin, delivered an address on "Truth and Politics," in November, 1925, on his inauguration as Lord Rector of the University of Edinburgh. The university could render its greatest service to the modern world, the prime minister said, by sending forth year after year generations of young men and women who have not only a stock of ideas, but minds which turn to the poles of truth. They would need the habit of truth when they left the university, the home of reflection and learning. It was England's greatest national asset, this habit which made for integrity in all the dealings of her people. Integrity had made possible the growth of commerce and foreign trade, and that spirit was nowhere better exemplified than in the Admiralty Court, to which ship-owners all over the world resorted. With somewhat different implications the prime minister, avoiding the lessons which Lord Birkenhead sees in the world of politics, directed his hearers to consider the tradition of integrity with reference to politics.

Why is it, then (asked Mr. Baldwin), that when we turn to politics a lower standard of habitual truthfulness is alleged to prevail than in the world of science or business? I am not now thinking of this country more than another. I think our reputation is at least as good as that of any other country in this regard, and it has grown in the last 100 years, and is growing. Primarily, I suppose, it is due to the fact that ever since states began to be they have been in peril and have trusted to force for their safety. War has been their normal history. Savagery has never been far away from the realm of law. How long is it since that ceased to be true of Scotland? With war and the preparation for war go the strategems of diplomacy, the dropping of the ordinary code of morals, a holiday for truth, and an aftermath of cynicism. "Force and fraud are in war the two cardinal virtues," wrote the

author of *Leviathan*. The statesman's goal is the preservation of the state, and the reasons of state have been held to justify all policies whatever. In the arena of international rivalry and conflict men have placed patriotism above truthfulness as the indispensable virtue of statesmen.

Patriotism above truthfulness: what an indictment of modern politics in international relations!

The problem of truth and politics is one of essential importance for modern democracy. Mr. Baldwin's emphasis upon the fact of their relationship in government today is significant because he is a responsible minister of state. When in the actual direction of a government's work the question of the integrity of men and policies is seen to be foremost, there is much reason for the hope that a new vitality can be given to the study of ethics and politics. To get interest aroused to the asking, What is truth in politics? means that a good way has been gone towards a new morality in the state. The prime minister declared that ethics is not a branch of politics but the reverse. However this judgment may be questioned, there is hope that by the saying and the doing of what is true that there may be developed a healthy identity between what is right and what governments attempt in their policies. Reality will then be given to national and international politics. Force and fraud will have to fight on a higher level for their right to exist; they cannot so easily pervert the idealism and patriotism of the peoples of the earth. Reality—that is, truth in politics,—can come only as nations will to do what is right. Truth today is wide apart from politics because there is so little integrity in the aim of politics. Therefore it is necessary in the interests of constitutional morality that political parties direct intelligently the people in their search for truth in democracy which alone means freedom within the nation and for all nations in the civilized community of the world. Democracy demands the keenest instinct for what is real from leaders; for the control of the democratic state must be based on an undersanding of its complex structure. This need of a sense of reality, if there is any hope for sane international government, is made very obvious by the effect of falsity and duplicity in the dealings of so-called modern democratic nations.



What, then, can be more urgent in international relations and domestic relations than that politics be brought to the needs of men? Democracies as they formulate their foreign policies must know the futility of clever intrigues, and they need to know it if democracy has capacity enough to promote international justice. The democratic movement within the state is constantly adapting itself to juster economic ideals and sounder social standards. The process must go on if democracy is sane enough to provide for the future. Modern democracy seems to be going towards common sense in international relations, in spite of the politicians and the press, and towards a more comprehensive ideal of justice which makes for good will in the social organization within the state.

There can be then no doubt that a new sense of reality is needed in the study of politics: a sense of reality about issues which makes it possible for the study of politics to meet men where they live, aiding them in directing common hopes productively through industrial and political organization within the state. This new reality will mean that institutions are not feared, but that they are more adequately used in interpreting what it is the people want. It also will mean that when politics are brought to the needs of men that stricter tests of honesty will not only be applied to institutions to which we are accustomed, but to leaders who work in mysterious ways their wonders to perform: largely because that is the way democracy allows them to work. An intelligent electorate will make the rules of the game for leaders increasingly high and hard; they must be in a democracy. Leaders today can plunge democracies into an adventurous economic program which may affect the standards of living for millions of people. It is necessary to know what they are about and why they want to do it, for their intent is important. Democracies are having a hard time making up their minds upon economic policies because the aims of leaders are not known to be for the welfare of the whole people. Partisanship is an unsafe guide for any economic program affecting the whole state. Party programs have been of little help because they have not often been carried out; and they have nearly always represented superficial grievances rather than voiced essential needs. Of course democracy has not really had its hands on the legislative machine.

This has made it possible in foreign affairs for democracies to be exploited by the militarist to a more disastrous extent than the home politics have been degraded by the demagogue. Democracy suffered its most serious reversals, almost bringing on economic and spiritual bankruptcy, because of the failure to work out a sane foreign policy. There has been no reality in it, except the brutal realism of failure to organize human affairs honestly among all peoples; all the more accursed because it is a premeditated failure. Carrying on wars under idealistic slogans has not only taken democracy almost inevitably to military dictatorship and enslaved the future to pay for past collective follies, but democracy has become cynical of great hopes before it half-way understood what ideals were behind these hopes. Democracy can very well ask, What price, Reality in Politics?

Truth and politics. It has a strange sound in our ears. The fact is, the sound is an uncomfortable one. What if truth means that the whole conception of a past national history must be re-interpreted? Or, that leaders who now seem effective disciplinary evangelists for democratic thought must be shaken down into the company of time-servers and petty compromisers who in a crisis made a successful bid for a notorious immortality? The hard task of sincere students is to put reality into our political thinking and honesty into our political machinery. There is so much fraud and force in our national vanity and so much sham in our territorial prejudice that the most honest may well feel at a loss where to begin. The leaders are a genially callous lot of folk who constantly interpret enthusiasm as the attendant sign of the failure of men who do not understand the mysteries of politics. The mysteries, it may be noted, pay them good dividends, being often based on the settled content of institutions and men who profit from the system of mysteries or else have surrendered to it. It is difficult to estimate the lesser evil: profiting from the mystery of politics or surrendering to it. But the people, like the leaders, are not to be weaned quickly from loving old political fleshpots, and there are many who solve their own political problems by confessing utter disbelief in democracy's capacity to organize the interests of modern life. That task, they say, is the essential duty of bank clerks and dictators.

The dictators have a benevolent love for dumb, brutish democracy; yet it is not quite clear how long dictators continue to love democracy, for they are a most human lot of men. Thus to make any progress at all in getting at the basis of constitutional morality it is best to look directly at the problem of truth and politics and see what present-day political organization can offer us in the way of guidance and encouragement.<sup>1</sup>

## II

The problem of truth and politics with regard to the party system can be put this way for the convenience of discussion: First, how far are political parties strengthening the faith of peoples in their democratic governments? Second, what is the duty of political parties in the promotion of intelligent faith in democratic government? Finally, the experience of England with the party system may be considered in conclusion.

The study of truth and politics can be related to party machinery only in those governments which are established on the principle of the rule of the majority. That is democracy as a form of government; and the problem is the growth of political morality in democracy. It is also well understood that the party situation in England today because of the long history of the party system and because of the determined

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<sup>1</sup>The function of political parties in the process of government has in recent years received a great deal of attention from the ablest writers in political science in this country. The literature on the subject is constantly increasing, especially on what may be called the practical side of party government. See Charles A. Beard's account in his *American Government and Politics* (4th ed., 1925), "Political Parties and the Processes of Government," pp. 125-162; R. C. Brooks, *Political Parties and Electoral Problems* (1923); A. N. Holcombe's *The Political Parties of Today* (2d ed., 1925), and his "The Political Party" in *State Government in the United States* (revised ed., 1926), pp. 172-211; and of much value is the penetrating insight of Professor Munro into the party organization of England in his *Governments of Europe* (1925), especially when he directs attention to the lessons that can be used by Labor in the United States, and also in his *The Government of the United States* (revised ed., 1925) is an excellent discussion of the party system, pp. 356-74.

effort of the state to maintain the democratic ideal of a standard of life, offers an attractive opportunity for students to judge the progress of democratic thought and its relation to party programs.<sup>2</sup> This is true with regard both to the place of individual leaders in directing the destiny of parties and to the influence of parties on the leaders themselves. There is no better material for the study of the party system than in the verdict upon it given by their leaders in their letters, memoirs, and public writings.<sup>3</sup> Baldwin on the party is about as instructive as the annual report of the party in conference assembled on Baldwin; Lloyd George on the Liberals may be more illuminating than the Liberals on Lloyd George. There can be no doubt that both in England, and in every democratic nation, parties are faced with the need of working out a new basis for democratic institutions; no one concerned with constitutional morality can ignore what parties may become when they are agents of an intelligent electorate determined upon justice. It may be that the party situation in England today is because the English have to think through first just what democracy can do with this industrial civilization; that is, if there is to be worked out a just and ordered liberty for all. America has produced its Henry Ford; England may be concerned with a higher ethics of industrial democracy. Whatever may be the immediate record of party development and however important the contribution may be to the working of the parliamentary system, England and English institutions can be depended upon to aid the student of government in his search for reality in the political organization of democracy. Reality is the problem of present-day politics. It is well that it be very closely joined with that abiding question in political society: How the state is to be good? In other words, what are the means by which parties can help maintain in democracies a healthy constitutional morality?<sup>4</sup>

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<sup>2</sup>The reader is referred to the author's *The Idea of Social Justice* (1927) for a detailed account of what the modern states of England and France have done since 1900 to maintain a *minimum* standard of living for their citizens, and the attitude of the parties of the state to the program.

<sup>3</sup>John Morley's *Recollections* (2 vols., 1917), for example, and the Earl of Oxford and Asquith's recent volumes of parliamentary experience.

<sup>4</sup>C. Deslie Burns, *cited* below, clearly gives this view: "The study of politics should increase our capacity for diagnosing social disease or

## III

The problem of truth and politics and the party system in democracy would, if reviewed at length, of course demand a consideration of the major questions before the modern state. Political organization within the state is largely concerned with party agencies; effective governments carry on their program through a highly geared system which includes local, district and national units. The political party has an economy all its own. But we are here concerned with only one aspect of the problem of government, that of reality in politics and the function of parties in achieving that ideal. Thus parties can be taken to be the mechanical contrivances of leaders; they are an administrative necessity for politicians who must get an approximate measure at all times of public opinion. As it is necessary in a democracy, the parliamentary machinery of which is dependent on party government, to know the majority opinion, elaborate apparatus is used to secure an expression of dominant opinion. After it is secured it is important for leaders to control it; it is the support leaders count upon in the carrying out of their program. The future may see a natural evolution of political control away from parties, with other means than that of party as a mechanism of discipline by leaders, but there will always be the necessity of finding out in a democracy what is the dominant opinion. The sources of control of this dominant opinion are important, and they will be studied carefully by all who are interested in exploring

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recognizing social good. The statement of facts must be accompanied by ethical judgment, and we must be able to see that what at first sight seems evil may turn out to be good, or what at first sight seems good may be really evil. . . . Now in answering the question 'What is wrong?' the opinion of the majority is a useful guide; for the patient is often the most skillful exponent of his suffering. Now the number and variety of answers to the question 'What is the remedy?' give a reasonable ground for the existence of political parties. It does not follow that every political party has a reasonable remedy to suggest; but clearly such a suggestion would be a good ground for the existence of a party. All attacks which I have seen on the party system seem to imply that we know what should be done but that party leaders will not do it. But I am not so confident that any one knows so much, and I am absolutely certain that the opponents of the party system do not," *Political Ideals*, 331-4.



the dark places of politics wherein dwell the phantom public. Through a study of the sources of the control of public opinion means may be found by which reality can be put into politics. When that time comes men, who have hopes as well as bodies, will be more than just pawns in the dull old mistakes of diplomacy; for it is equally as important to note the rise of the question-asking political democrat in nineteenth and twentieth-century democracy as it is to note the silent revolution that is made by the rise of the wage-earner in industry. It is not well for students of government to become saturated with the idea that a few scheming leaders can pervert the process of democracy, and that the will of the people is a cheating platitude of word mongers. Too much cynicism from college professors can make Jack a dull democrat, all too tolerant of self-annointed dictators. The ethical basis of democracy is the soundest common sense; and however picturesque tyranny is, it offers no more comfort for the wise than the constitutional freakishness of growing-up democracies. Since the late armistice political theory has been hardly more than a coquette, and democracy has had some hard blows from those who, though they make a noble effort to believe in it, consider almost the only salvation is in a determined committee leadership. Democracy has been a "problem," rather than a force. Yet what advantage is there for those who hope for democracy if democracy is just the recording timepiece of the caprice of leaders? But democracy is more than that. The story of justice and good will and coöperation, in short, the democratic movement, is just begun.

The question first suggested—How far are political parties strengthening the faith of peoples in their democratic governments?—presupposes as an accepted fact that the chief problem of government is the finding out of how government is to be good. The test then applied would be this: that political parties are strengthening the faith of people in their democratic governments if the conditions of living the good life are constantly kept to the place of first importance in the state. Parties are confirming the democratic hope if men are convinced that the will of the state is for the good life of all the people, and that that will is a purposive power making for security of the citizen in all his relationships. Parties are

sound agents of public morality if by the formulation of a plan of work for a government in power they prevent the rise of a sullen rebellion against the power of the state because the people believe its power is a vested interest dispossessing them of the good things of life. Thus it is clear that there is a positive duty for parties within the state. Not only must they aid the state in the upholding of its authority by convincing groups that a common power is the safety of all, but the parties must direct the energies of constituent groups into that spirit of coöperation wherein a common will is defined which comprehends the good of all the people. To aid in the creation of a common will in democracy is not only the highest duty but the special function of a political party which has for its aim the strengthening of the faith of the people in their democratic governments.

#### IV

It may be well in estimating the place of parties in the promotion of intelligent faith in democratic governments, to briefly record the views of men who have been strangely attracted by the public scene in which they have played an honorable part. England need not blush for Baldwin and Morley and Bryce. Integrity is best expressed in honorable men. So here is a clear statement from the prime minister which completes his earlier quotation above on truth and politics:

The party system is perhaps a contributory cause to giving politicians a bad name. The system has its advantages—its teamwork and its loyalties. But it does put a certain embargo on complete frankness of speech in the arena of debate. Politics can never be an exact science. Politicians must talk, and they cannot today confine their speeches to the House of Commons. The difference between the Greek sophist and the modern demagogue is said to consist in this: the one displayed his ingenuity by appearing to prove that which his hearers knew to be false; the other displays it by appearing to prove that which his hearers wish to be true. It is the business of the universities to change all this, and they are doing it.

Let us aim at meaning what we say and saying what we mean. Let us take our stand on public right, and a law of nations, with Grotius rather than Machiavelli. Let us seek to moralize our public intercourse and reduce the area of casuistry and duplicity. That is not only the accepted principle of the best amongst us, but it is, I am sure, in harmony with a widespread instinct in the British people.

To supplement the statement of the prime minister it is well to add the word of the great Liberal leader, the Earl of Oxford and Asquith. On the same day that Mr. Baldwin gave his rectorial address the Liberal ex-prime minister, on receiving the freedom of the City of Huddersfield, said that during the many years in which he had been engaged in public life he had had a considerable experience both of its ups and downs. "But through it all," he said, "and never was it more true than today, I have never been for a moment tempted to be pessimistic about the future of my country. After more than forty years of strenuous controversy in many fields I see no sign of the decline in what Burke once called 'the inbred integrity' of the British people." The only thing which they, like the Americans, would not forgive and which they ought not to pardon was anything in the nature of crookedness, of double-dealing, or of self-seeking. It would be easy to say something about politics cleverer than that, but it is a valuable note on parliamentary manners.

When Viscount Bryce on Christmas Eve, 1920, came to write his preface to *Modern Democracies*, he hoped that it was needless for him to disclaim any intention to serve any cause or party, for a man must have profited little by his experience of political life, he wrote, if he is not heartily glad to be rid of the reticences which a party system imposes and free to state with equal candor both sides of every case. At the end of his days John Morley, though he could look back, as he said, on an epoch when hearts were uplifted with hope, and brains active with sober and manly reasons for the common good, was stopped by a painful interrogatory:<sup>5</sup>

Is not diplomacy, unkindly called by Voltaire the field of lies, as able as it ever was to dupe govern-

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<sup>5</sup>*Recollections* (1917), Vol. II, p. 366.

ments and governed by grand abstract catchwords veiling obscure and inexplicable purposes, and turning the whole world over with blood and tears to a strange Witches' Sabbath?

No definite answer can be given by statesmen to this problem of truth and politics after their long experience in party and state affairs. One thing, however, is clear, that moral standards are not lost,<sup>6</sup> and there is yet the consciousness of what Woodrow Wilson called the infinite difference between the right thing and the wrong thing. Then there is hope. The Christmas Eve thoughts of Bryce are here pertinent, when he sought to repress the pessimism of experience because he did not think it really helpful by way of warning to the younger generation. He gave hope when he recorded that

The saddest memories of political life are of moments at which one had to stand by when golden opportunities were being lost, to see the wrong thing done when it would have been so easy to do the right thing. But this observation was made by a Persian to a Greek at a dinner-party, the night before the battle of Plataea twenty-four centuries ago, and the world has nevertheless made some advances since then.<sup>7</sup>

If there is anything to be gained from so brief a survey of the personal aspect of the problem of truth and politics, from the men who have lived through the changing years, perhaps it is this: That there is hope that the problem of politics will become more clearly stated, freed from error and prejudice; and that though the experience of men with political parties may be disillusioning both in national and international affairs, that yet men who love their country and their fellowmen the whole world round believe that a better order of relationships can be worked out on a political basis. The last sin against politics in democracy is to give up hope.

It would seem also that the problem of the moral standards

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<sup>6</sup>The suggestive book of Professor C. E. Merriam, *Four Party Leaders* (1926), bears strong conviction on this point; also his *The American Party System* (1922) and W. B. Munro, *Personality in Politics* (1924).

<sup>7</sup>Quoted from his *Preface*. The study by the Rt. Hon. H. A. L. Fisher, *James Bryce* (Viscount Bryce of Dechmont, O. M.) (2 vols., 1926) is rich in personal values.

for political parties directly leads to a consideration of the capacities of individual leaders in democracy. Integrity is the staunch word Baldwin started out with in discussing truth and politics. When leaders have developed a sense of honor a cleaner party system has been the result. There is a close connection between party and personal character. If leaders are honest the problem is much simpler for the democracy. Then finally we may say with regard to the promotion of faith in democratic government by political parties, that a good share of the responsibility for the failure of democracy to understand its problems is due to the fact that leadership has refused to be courageous in directing opinion. This lack of courage in leadership is a factor in political progress as significant as any other in considering dominant opinion and its control.

## V

It may be well to briefly summarize the first two suggestions of this paper: How far are political parties strengthening the faith of peoples in their democratic government? and, What is the duty of political parties in the promotion of intelligent faith in democratic government?

Mr. Lippman bluntly says that it is no longer possible to believe in the original dogma of democracy: that the knowledge needed for the management of human affairs comes up spontaneously from the human heart.<sup>8</sup> A statement in such terms is hardly fair to the theory of democracy, yet it is not a very serious indictment of the democratic process. What Mr. Lippman is guarding against is that old assumption of democratic theory which led us to "expose ourselves to self-deception, and to forms of persuasion that we cannot verify."

In his efforts to appeal more often to reason in politics he has the sympathy of men who like himself love their fellow-men and believe that the future can more wisely follow the past than merely continuing old mistakes. "It is hard to obey reason in politics," he says, "because you are trying to make two processes march together, which have as yet a different gait and a different pace."

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<sup>8</sup>*Public Opinion* (1922), p. 248ff.



Until reason is subtle and particular, the immediate struggle of politics will continue to require an amount of native wit, force, and unprovable faith, that reason can neither provide nor control, because the facts of life are too undifferentiated for its powers of understanding. The methods of social science are so little perfected that in many of the serious decisions and most of the casual ones, there is as yet no choice but to gamble with fate as intuition prompts.

But we can make a belief in reason one of these intuitions. We can use our wit and our force to make footholds for reason. Behind our pictures of the world, we can try to see the vista of a longer duration of events, and wherever it is possible to escape from the urgent present, allow this longer time to control our decisions. And yet, even when there is this will to let the future count, we find again and again that we do not know for certain how to act according to the dictates of reason. The number of human problems on which reason is prepared to dictate is small.

This point of view is interesting because the author is one who has led the authoritative critics in estimating the disastrous effects of democracy's will to power. It seems that most of the attacks against democracy have too wide a range, for their indictment to have any specific value; most of the argument against democracy could be applied equally as well against life itself. The idea of human equality, which is the beginning and end of democracy, has always been a dogma open to dull as well as brilliant attacks. Human equality is no easy doctrine to defend, but the logic of it compels even college professors of government to be optimists. The wisest and the best of men have felt the torment of spiritual defeat, but mankind as a whole has never given up. There is perhaps no better reason for this stubborn attitude of hope than that Mr. Lippman gives in concluding *Public Opinion*. He says that the more realistically men have faced out the brutality and the hysteria, the more they have earned the right to say that it is not foolish for men to believe, because another great war took place, that intelligence, courage, and effort cannot ever contrive a good life for all men.<sup>9</sup>

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<sup>9</sup>Lippman, *op. cit.*, p. 418, my italics. Professor Ernst Troeltsch, a profound scholar and humanist, whose death in 1923 was a cruel blow to

Great as was the horror, it was not universal. There were corrupt, and there were incorruptible. There was muddle and there were miracles. There was huge lying. There were men with the will to uncover it. It is no judgment, but only a mood, when men deny that what some men have been, more men, and ultimately enough men, might be. You can despair of what has never been. You can despair of ever having three heads, though Mr. Shaw has declined to despair even of that. *But you cannot despair of the possibilities that could exist by virtue of any human quality which a human being has exhibited.* And if amidst all the evils of this decade, you have not seen men and women, known moments that you would like to multiply, the Lord himself cannot help you.

The important work before parties can perhaps be stated thus: That it is their duty to direct the power which is in the hope of democracy by giving clear-cut issues to the people. Parties can have their technical advisers, and now with the aid of the rapidly expanding research agencies there will be no lack of expert opinion. The essential duty before the political parties of today, whose whole political philosophy is based on the constitutional principle, is to clear up the important problems of the democracy by getting all the information that is possible about them, and then presenting definite proposals upon which the electorate can give a decision. The parties can do a great deal by continuing energetically this training method until democracy learns to have confidence both in the leadership of a party and confidence in their own capacity to decide on national issues. A new morality will then be seen in the leadership of political parties.<sup>10</sup>

This new morality will make for a better citizenship because it will help to create a faith in the central legislature, which

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learning, has given a stimulating study for the student of politics in his "Politics, Patriotism, and Religion," in *Christian Thought* (London, 1923), pp. 133-67. Cf. James Harvey Robinson, *The Mind in the Making*, chap. VII.

in modern democracy must be the coördinating authority

<sup>10</sup>See the comments of C. Deslie Burns, *Political Ideals* (3d ed., 1919), pp. 331-7, "Political education is what is most needed; political purity may be left to take care of itself" (337).

which effects "very rough first approximations." The party groups will be the connecting link between the legislature and the citizen. Mr. Laski believes that "all the direct power the average citizen can hope for is, first the opportunity periodically to seek a change in the coördinating authority, and, in the intervals, to use the groups of which he is a part to bring pressure to bear upon that body."<sup>11</sup> The success of this central legislature in democracy, Parliament, depends upon the character and ability of its members, and its authority depends upon the strictness with which it watches over the rights of the citizens. But how effectively these rights are safeguarded depends upon an alert-minded and educated electorate. Parliaments have been prejudiced because the needs of men have not been set forth by a dominant opinion, and because legislation has been influenced by the power of property. But with the growth of a more lively public opinion, which will see to it that it is represented in the central legislature, the needs of the great mass of the people will be more adequately defined. This insures "the existence of parties the aims of which are more realistic, the terms of conflict between which are less likely to involve the defeat of the general purposes of the state."<sup>12</sup> And it may be noted that another factor in the success of the central legislature as a coördinating authority in democracy depends upon the full and complete information at its disposal upon all matters that must be decided by it. In this field of service it is hoped that all students of government may add worthy support. When the aims of all groups are set forth and when ample information is provided for decision upon the policies of government, then it will be possible to determine whether the unity of aim of good men is a factor making for democratic progress. Towards the recognition of the necessity of that unity of aim political parties can direct popular thought.

## VI

It is in England that the party system first became a force in free political life and an integral part of the constitutional

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<sup>11</sup>H. J. Laski, *A Grammar of Politics* (1925), p. 265.

<sup>12</sup>*Op. cit.*, p. 266.

government. Parliament has proudly maintained the necessity of the party system in government, which in England had its beginnings with the Whigs and the Tories from the days of Charles II. Mr. Lowell points out that there is no doubt that even in the seventeenth century party struggles were carried on both in Parliament and by pamphlets and public speeches, with a freedom unknown in most other countries. But it is of course well known that the parties as we know them today were evolved slowly by the new problems of a later generation busy about the ends that governments could serve. Thus the expression, "His Majesty's Opposition," said to have been coined by John Cam Hobhouse before the Reform Bill, would not have been understood at an earlier period. President Lowell believes that it embodies the greatest contribution of the nineteenth century to the art of government—that of a party out of power which is recognized as perfectly loyal to the institutions of the state, and ready at any moment to come into office without a shock to the political traditions of the nation.<sup>13</sup> Political morality is the great achievement of parties in democracy when the standards of party action are high. Party action contributes directly to the building up of public opinion that is active, and when the successful party goes into power this consenting opinion is the source of its popular hold on the people. This is what Bryce had in mind no doubt when he said that it was logical to draw the conclusion that in countries which enjoy representative government parties have two main functions, the promotion by argument of the principles and the carrying of elections.<sup>14</sup>

The traditions of the Parliamentary system in England have disciplined the two older parties, and the Labor Party has developed under the tutelage of the established customs of

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<sup>13</sup>*Government of England*, Vol. I, p. 451. Cf. *The Two Party System in England*, by G. P. Trevelyan, being the Romanes lecture for 1926, for a brief and clear historical analysis.

<sup>14</sup>*Modern Democracies*, Vol. I, p. 113. Charles A. Beard writes that "the very process of government is set in motion and kept going by the political parties. . . . *Public opinion is to a large extent party opinion.* . . . It is through the party that the citizen generally discharges his political duties; his influence on the government is usually brought to bear through party channels," *American Government and Politics* (4th ed., 1925), p. 126.

a central legislature. England can be counted upon to make the party system work if it is yet an instrument suited to the governments of modern democracies. There is in England the fixed mood of partisanship, operating under authoritative democratic conditions, and it would seem that in no other country could democratic government so effectively direct the reshaping of parties for their work in twentieth-century democracy. It is a test of the genius of the constitutional system in England, a challenge to her leaders wisely to use the parties while there is cohesion, a unity, and a strength of popular approval. Parties have developed under a favorable condition for faith in Parliament, largely because Parliament has been responsive to the changing needs of the people. There is yet great power in the political appeals of sound nationalism, and this can be used to promote a unity of aim among men who want the state to be a creative force in establishing the rule of justice. The unity of aim can be a driving influence both in the party and among the parties, which owe allegiance to the state. If there is an inherent weakness in a coalition, and this seems to be the view of nearly all English leaders, then it is the duty of statesmen to direct the opinion which is represented in intelligent party groups.

The strength which is in parties is due to the fact that they really represent vital divisions of thought and opinion among the people. Parties are artificial only when there is no passion in them. But the record of men who gave unstintedly of themselves to causes lost and won testifies to the fact that where parties are dominating exponents of clearly defined issues that men will rally behind the party program. The failure of parties in the past to clear up the debris of accumulated folly accounts largely for their impotency in governmental organization. Old slogans are kept when all life has departed from them. Policies are adhered to that represent worn out enthusiasms, epitaphs over blunders of the past made under the emotional appeal of boy orators, or else they typify to the thinking citizen the incapacity of the party to rid itself of superannuated liberalism. Mr. Lloyd George, who should know, told an Oxford Union audience that in politics that "there is no more stale and unappetizing dish



than stale flapdoodle." Political parties need to keep that constantly in mind. Nothing is quite so profitless as going back to where old political successes lie buried; a cause bitterly fought and won years before need not be disturbed by being used as a contemporary argument; nor should the deathbed animosities of once useful prophets curse the progress of a party. How valuable this policy would be for the Democratic party in the United States; but what chance is there for it to be followed? How hard it is in England for old party loyalties to reinterpret the enthusiasms of a new program that demands from its followers the old ring of authority which comes only when there is conviction that what the party has to give is life and liberty for the people. Only parties with convictions can survive; but the death of a party is often at a poor slow-dying rate. Yet it seems that in England the capacity to direct a party program both within and outside Parliament is more fully developed than in the United States; there is now the comprehensive social insurance scheme and the upheaval of the land tenure campaign to prove that there is much that the parties can do in organizing public opinion. The effort is made by leaders to forecast the popular reaction, to plan an attack, to map out a constructive program, and then to go before the people for a mandate for Parliament. The way is thus open for parties to be servants of political democracy, to be the informed advance agents of progress, assuring by their constant vigilance over public questions that the giant called the popular will won't fall asleep and dangerously hurt everybody while in prolonged somnolence.

The party as an active force making for political morality is a significant function in the industrial democracy of this country. Political parties are needed today more than ever if there is really any validity to the claim that all the people and their welfare is the aim of democratic government. Lord Bryce summed up a great deal of theoretical thunder in his passing belief that "questions relating to the distribution of political power having been everywhere largely disposed of, the dividing lines between parties tend to be economic."<sup>15</sup> But even if democratic society is to be regimented into in-

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<sup>15</sup>*Modern Democracies*, Vol. I, p. 125.

dustrial areas there will persist a strong community interest which post-war Labor theory has not failed to take into consideration, as for instance in the plans of the Webbs and the writings of Laski, Cole, and Russell. Even if we are always going to have wars and rumors of wars, we must have Parliaments to vote the billions, draft the boys, apportion Hog Island graft, and then the Elder Statesmen must bequeath to the Younger Statesmen their traditions to make rumors of wars.

## THE BASIS OF AMERICANIZATION

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Society exists only in the presence of communication. Communication in turn is dependent upon the recognition of the same set of symbols and meanings by all the members of the group or, more abstractly, upon the common sharing of a universe of discourse. Moreover, a certain minimum of agreement or of common appreciation of identical values is necessary before the interaction characteristic of human society can take place.

As applied to national groups these generalizations mean that if a state would become unified in the highest degree its citizens must all speak the same language and must believe in the same principles of government and forms of social organization. As applied to our own country the statements mean that every American should be able to speak, read, and write English and that he should actively support the Constitution, the public school system, the monogamic family, and all other institutions and common faiths which may be considered of fundamental importance.

The failure of the immigrant to conform immediately to these requirements and the recognition of his inability by those who profess an interest in our country's welfare have called our attention to the problem of Americanization. Our increasing heterogeneity, it is asserted, threatens the stability of our national life. Unless we somehow stop the trend toward diversity, we shall be in constant danger of revolutions or of bolshevism or of other somewhat less serious internal disturbances.

This interesting question, though quite recent in origin, has already served as the theme of many books and as an incentive to the devising of numerous plans for its solution. Some of these plans have been tried, but all Americanization programs hitherto attempted, especially those of a formal nature, have had at best a doubtful success. The ways of the foreigner are too firmly rooted in his nature to be changed by ceremonial

induction into American citizenship. Experience indicates that however desirable it might be to inject Americanism into the foreigner as a vaccine against bolshevism the resulting immunity is too short-lived to warrant the practice.

The failure of Americanization plans has been accounted for, not by discovering defects in the plans, but by blaming the immigrant. The "new immigration," so called, consists of people from the southern and eastern parts of Europe, people who are different, racially and culturally, from the earlier immigrants. The observed differences in culture are held to be due to racial inferiority and, consequently, not of a kind which will disappear in the ordinary process of assimilation. Such a view forces upon us the conclusion that there is nothing to do but wait resignedly for the ultimate amalgamation which is to produce a new and nondescript American people, and which is to combine all the bright hues of racial individualism into the dull drab of mongrel mediocrity. Without wishing to minimize the real significance of racial differences we may nevertheless suggest, to relieve the dreariness of the outlook, that some of our difficulties may be the result of recent changes in the social and economic conditions in this country. It may be that in addition to a "new" immigration we are dealing with a "new" America, the characteristics of which should be taken into account.

Meanwhile the problem of Americanization remains unsolved. The enactment of restrictive immigration laws has given us a false sense of satisfaction by making us believe that with the practically complete cessation of immigration assured by restriction the problem would automatically disappear. As a matter of fact, immigration is still large, even under the terms of the restrictions now in force. According to statistics reported in the *Monthly Labor Review*,<sup>1</sup> the number of immigrants for the fiscal year of 1925-1926 was 304,488. The figures for the early months of the current year indicate that the total for 1926-1927 will be still larger. Nearly all of the increase comes from the non-quota countries, particularly Canada and Mexico. The immigration from these countries, since it consists mainly of non-English-speaking people of low economic status, does not furnish ideal material for American

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<sup>1</sup>*Monthly Labor Review*, XXIII, 197; XXIV, 228.

citizenship according to our present standards.

But even if we were to stop immigration altogether, we should still have before us the problem of assimilating the large groups of foreigners already here. Coming to America or even living here for a number of years supplies no guarantee that a man will become an American. The *Fourteenth Census*<sup>2</sup> reports only 47.2 per cent of the foreign-born white population as naturalized. Of the remainder less than 9 per cent have taken out their first papers. Foreign-born whites over the age of 10 years show an illiteracy rate of 13.1 per cent, which is six and one-half times as high as the rate for native-born whites of the same age group. Still more significant is the number of persons in the United States who cannot speak English. Eleven per cent of the foreign-born whites over the age of ten years, an army of a million and a half, are in this class. In Texas over half the foreigners cannot speak the tongue of their adopted land.

Some day we shall be forced to recognize these facts. When that day comes it will be very desirable to have at hand a knowledge of the facts sufficiently extensive to enable us to meet the situation with appropriate social action. The first step toward the attaining of such knowledge is, of course, an understanding of the meaning of the problem. Without a definition of the goal it is impossible to point out the way leading to it. We shall, therefore, inquire into the nature of Americanization, with the view of indicating the changes involved in the process and the mechanism by which these changes are brought about.

As a beginning it is necessary to consider the question, "What is Americanism?" Two answers widely differing from each other at once present themselves. The first of these defines Americanism as the group of traits possessed by Americans, but possessed in much smaller amount or not at all by people of other nationalities. These traits constitute the Americanism by means of which the practiced observer at once recognizes the American tourist no matter where he may be encountered. The same traits, by their absence, enable us to distinguish the immigrant from the native.

This is the answer which must be accepted in any investi-

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<sup>2</sup>*Fourteenth Census of the United States*, Vol. II, 805, 1150, 1250, 1252.



gation which aims to make an objective study of Americanism. It shows the traits actually present in the American people as individuals. By taking it as the basis for comparisons among the various racial groups at different times and places, it can be made to show the rate of assimilation and thus indicate the success or failure of our Americanization programs.

Such comparisons are not as yet numerous enough to justify any conclusions as to what they would indicate, but it is probable that they would show a rather high degree of homogeneity in such conspicuous, external traits as dress and manners, and that they would show considerable diversity in such traits as respect for law and regard for the rights of others. Such differences are to be expected, because economic pressure in the form of discriminations in employment tends to force the individual to comply immediately with common standards of appearance, but neglects his inner self entirely. More than likely we should find, if we examined the American people closely, that the process of Americanization is not so rapid nor so thorough as we had supposed.

That students of the subject are vaguely aware of this is shown by their speeches and writings, wherein they insist that the true Americanism does not consist in conformity to ordinary custom in matters of food, clothing, or speech. It is, on the contrary, something finer, higher, nobler than the superficial similarities of behavior which are so quickly acquired. It is something to which we always aspire but never attain. It is, in short, not what we are but what we hope to be.

In this view, which is the one most commonly presented, we find the second definition of Americanism. It may be stated as follows: Americanism consists of a set of standards and ideals of conduct which, according to general belief, must govern us in our relations with each other as individuals and with other nations as a people, if the best interests of all are to be served. Since this is the meaning of Americanism as the term is used in this discussion, it may be well to consider it in some detail, first, with regard to the specific standards set forth and, secondly, with regard to their common meaning and their resemblance to ideals not usually thought of as distinctively American.

Any enumeration of Americanisms must necessarily be incomplete; it can at best be only representative. But a fairly good idea of the kind of ideals embodied in the larger concept may be had from the following random selection: coöperation, democracy, cosmopolitanism, "square deal," "fair play," union, patriotism, equal opportunity, free speech, free education, like-mindedness, self-determination, brotherhood, humanitarianism, liberty, social and political equality. Sometimes the emphasis is more definitely on ideal social institutions as, for example, in the following list: popular government, Christianity, monogamy, private property, a small standing army, participation of the workman in industrial control.

Diverse though they are, these ideals can readily be seen to possess fundamental similarities in the sentiments and attitudes out of which they have come. There lies implicit in each a spirit of kindliness and loyalty and love for fellow-man. These are the sentiments which govern our relations with our kinsmen and friends, and to lesser extent our relations with our neighbors, with the members of our clubs, our churches, and our communities.

Of course, Americans are not the only people who believe in giving their friends kind treatment and in aiding them when needs arise. Group loyalty is so widespread a trait as to deserve being considered a part of human nature itself. In certain respects it is more highly developed among Europeans than among us. The strongly nationalistic groups, for instance, are much more intensely patriotic than Americans. The same may be said of other traits included in the category of American ideals. The family solidarity observed among many foreign peoples surpasses anything of the kind found in America. And the church in foreign lands seems generally to form stronger ties among its members than is the case with us. Even where these ideals are seldom expressed in practice, they are, nevertheless, as in this country, held up as the standards which ought to be followed.

Such differences as appear between the immigrant and the native are, therefore, not differences in ideals or in the manner of dealing with friends, but rather differences in notions as to who should be included in the circle of kinsmen, friends or neighbors. Membership in these groups is all that a person

needs to guarantee him fair treatment at the hands of the rest. We are all familiar with the case of the man who discovers when about to close a sharp business deal that his intended victim is a long-lost brother. The discovery so changes the situation that the business man finds himself unable conscientiously to profit at the other's expense in the way which would have given him no qualm whatever if he had been dealing with a stranger.

The feeling of reluctance to take unfair advantage of another quickly develops among people who associate on intimate terms. And in the more permanent groups this feeling becomes very strong, rising at its best to an ideal of conduct in group relations which encompasses all of the specific ideals enumerated under the heading of Americanism. The comparison shows conclusively that *Americanism and primary group ideals are identical*.

Fortunately for our purpose the origin and development of the latter as such have received so much attention from sociologists that the mechanisms are already familiar to us. It has been found that the primary group ideals develop and flourish in face-to-face groups and nowhere else. A close-knit family is almost indispensable to the successful inculcation of these ideals in the individual. Much less important, but still of great value, are other primary groups, such as the play-group, the congregation, and the neighborhood. Without these groups all the so-called higher ideals, Americanism included, would languish and die.

The problem of Americanization turns out to be, therefore, not a question of giving the immigrant new ideals, but of fostering those which he already has and harmonizing them with our own. The immigrant will be required to transfer his allegiance and to recognize Americans as his friends and neighbors. Americans, on their part, will have to accept the immigrant as friend and neighbor before the process can be completed. The process is or, at least, should be one of assimilation, and not, as sometimes seems to be the case, a conflict ending in accommodation by the weaker side.

The process itself must take place in those primary groups of which both Americans and immigrants are members. The knowledge of this fact makes it easy to see why we have an

Americanization problem. For there are almost no primary groups made up of both foreigners and natives. Our own primary groups are too few and too loosely bound together to furnish a satisfactory means of transmitting ideals among ourselves, not to mention the immigrants. We speak loudly of high standards, but in reality they have little influence upon our conduct. Our pretensions to honesty and fair play do not in the least interfere with the driving of a sharp bargain when opportunity offers. Our tendency to exploit each other is notorious; one European writer has identified it with the spirit of capitalism, of predation. The ideal of equal opportunity has been perverted by the exploiter to mean freedom to defraud the public without interference from the law. We treat each other more as enemies than as friends.

The problem, therefore, is not concerned with immigrants alone: we need very much to Americanize ourselves. Our history shows that the disparity between American ideals and our actual practices is becoming greater rather than less. The multitudinous enactments of our legislatures bear witness to the failure of the ideal of kindness as a guide to conduct in our relations. This condition appears to be correlated with the substitution of secondary for primary contacts. As we acquire more acquaintances we lose our friends.

In early times the close relation between the manufacturer and the consumer guaranteed honest production. Similarly the personal contacts between the employer and the employee tended to make for honest work and fair wages. The present situation is quite different. The machine process and large-scale production have separated the workman from his master by a gulf so wide that sympathy seldom crosses it. The worker has been reduced to a number in a book and the employer has become a corporation. Changes in the methods of distribution have destroyed nearly all the personal relations which formerly kept producer and consumer alive to each other's interests. Furthermore, the increased mobility of the population prevents the formation of lasting associations in the neighborhood and the community. Formerly most families lived in the same place for many generations; now it is no uncommon occurrence for the family to move several times in a year and, perhaps, go to pieces on the way.

This picture of the condition of social organization shows some of the difficulties which must be met by the immigrant who comes to make his home in America. Most of his group relations are broken by his departure from the homeland; he must seek new personal contacts among people who have comparatively few such contacts among themselves and who are distinctly prejudiced against difference of any sort, but particularly against obvious, if superficial, peculiarities.

As long as the immigrant remains distinguishable as a foreigner, he is, generally speaking, denied access to American primary groups. If he is so unfortunate as to have fixed racial traits, as do, for instance, the Japanese, he must remain forever an outcast. It is only after the foreigner has succeeded in looking like an American that he may be accepted and given an opportunity to learn that there exists such a thing as American ideals. Meanwhile, he will have learned from bitter experience that exploitation is the rule in practice, and when he hears of ideals he is more than likely to greet them with a smile of cynicism. Eventually he may get the habit of repeating the words with the rest, regarding them thenceforth as a cloak of hypocrisy to conceal shrewd business practices from his more ignorant compatriots.

This is a description of the situation as it exists in the present. What the future holds in store cannot be accurately determined, but we may notice the direction of certain trends of social change and on the basis of their effect in the past form some idea of their effect in the future. Of such trends we may mention briefly two which are of some significance to the problem of Americanization. The first of these is the improvement in facilities for communication and the continually enlarging part played by communication in our lives. Closely associated with this is the gradual raising of the level of education among the American people. It is reasonable to suppose that if this trend continues we shall come nearer and nearer to having the well-informed public which is prerequisite to successful democracy. The possession of a commonly shared body of communicable information, while by no means the equal of primary group ties, does, nevertheless, give to its possessors a feeling of fellowship; loose, to be sure, but possi-



bly strong enough to permit a kindly appreciation of the other person's point of view.

The second tendency pulls in the opposite direction. It is the tendency for social distances to multiply and increase. Classes formed on the basis of wealth and special interests become more and more rigid, at last petrifying into castes. Specialization in the economic field makes for segregation on the basis of function, which, because of competition and because certain groups consider their occupations more honorific than others, forms a barrier between them. The social distance thus created will interfere with the propagation of democratic ideals, both among ourselves and among the immigrants who come to our shores.

But neither of these trends is more than incidental in the process when compared with the function of primary groups, and of the primary groups none is nearly so important as the family. It is here, in intimate, face-to-face relations that Americanization must take place if it is to take place at all. We may say, to summarize the discussion, that *upon the future of the family depends the future of the American ideal*. It may be, of course, that we shall be able ultimately to dispense with informal group ideals as a means of social control, substituting for them the rigid rule of law, but great improvements in the fields of legislation and of law enforcement are necessary before such a change is even thinkable. Meanwhile the social engineer will do well to encourage and foster the family, in the preservation of which lies the only sound basis for Americanization.

## ARE "C" MANDATES VEILED ANNEXATIONS?

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For eight years the question has been batted back and forth among theorists and politicians as to whether mandates, particularly "C" mandates, constitute annexations. Some have maintained with force that the territories under mandate are in theory, and are supposed to be in practice, in quite a different position from annexed territory; others have maintained with equal force that in fact Article 22 of the Covenant of the League of Nations, which set up the mandates system, is a mere screen to fool the world, and that the system of annexation and exploitative colonial administrative methods heretofore used continues. Many League supporters maintain the former stand, basing their claim upon the provisions of the Covenant, such as those regarding trusteeship, tutelage, mandate, and authority to administer mandated territories "on behalf of the League." The other side, including those who interpret the mandates system as providing for annexation in the "C" mandates, bases its case upon the provision of the Covenant regarding the administration of the mandated territory as an integral part of its own territory by the mandatory power, upon the provisions of the mandate texts, and upon the actual systems of administration set up by the various mandatory powers for the government of these territories.

It has become an important question of policy for the League of Nations to have this question answered. Much of the future of the mandates system depends upon whether "C" mandated territories may be treated as annexed territory. This question cannot be completely and finally answered yet, but much light can be thrown upon the subject by an examination of the origin and nature of the mandates system and of the practices of the mandatory powers in the governing of their respective "C" mandated territories. In the brief space of this article the author will attempt merely a short excursion into the origins and nature of the mandates system, and will examine the practices of government in only two of the man-

dated territories, namely, Southwest Africa and Western Samoa.

The origins of the theory of the mandates system have been variously stated; but there is fairly general agreement that most of the ideas and most of the impetus for the creation and adoption of the system at the Paris Peace Conference in 1919 were furnished by Smuts and Wilson, respectively. Wilson went to Paris without any very comprehensive and detailed plan for the disposal of the German colonies and of the territories severed from the Turkish Empire. So, it was without much hesitation that he adopted the ideas set forth by Smuts regarding the mandates system. As set forth by Smuts in his *The League of Nations: A Practical Suggestion*, the mandates system was to apply to the territories taken from, or liberated from, the Russian, the Austro-Hungarian, and the Turkish Empires, but was not to apply to German territory or possessions. The essential point for our consideration here is that Smuts proscribed annexation as a principle to apply in the mandates system. His words, uttered in December, 1918, specifically demanded "no annexation of any of these territories to any of the victorious Powers."<sup>1</sup> This is very clear language against annexation. On January 10 following, Wilson put forth his Second Draft of the Covenant, to which he appended as Supplementary Agreements the provisions for the mandates system, which closely paralleled the text of Smuts' proposal. He made the significant change that the German oversea possessions should be brought within the scope of the system. In his proposal we find the proposition that "there shall in no case be any annexation of any of these territories by any state either within the League or outside of it."<sup>2</sup> This provision was repeated in his Third Draft of the Covenant.<sup>3</sup>

In the discussion of the mandate proposal in the Peace Conference it was made clear that all understood the Smuts-Wilson proposal to prohibit annexation. The fight was between the principle of mandates on the one side and the principle of an-

<sup>1</sup>Smuts, J. C., *The League of Nations: A Practical Suggestion*, pp. 12-13.

<sup>2</sup>Baker, Ray Stannard, *Woodrow Wilson and World Settlement*, 3:108-110.

<sup>3</sup>*Ibid.*, pp. 126-128.

nexation on the other. For instance, Wilson argued for the mandates system on humanitarian and other grounds, contrasting it with the principles of ruthless exploitation and annexation. Smuts said, in the Council of Ten on January 24, that, as far as Southwest Africa was concerned, a mandatory system would not work practically as well as direct annexation.<sup>4</sup> Prime Minister Hughes, of Australia, vigorously opposed the mandate principle on the ground that it would prevent Australia from annexing the territory which she had conquered from the Germans.<sup>5</sup> It is clear, then, that the principle of mandates which Wilson was holding out for was understood by him and by his apponents to run counter to and to prevent the possibility of the application of the principle of annexation.

The pressure of the British Dominions for direct and immediate annexation of the territories which they had conquered was very great, as was Wilson's tenacity in demanding the mandate solution. Compromise seemed necessary. Lloyd George apparently saw the way out of the difficulty by weakening the mandates system to such an extent that the Dominions would be willing to accept it. A meeting of the British Empire Delegation was called on January 29, after that day's meeting of the Council of Ten,<sup>6</sup> and the British Premier secured the adoption of a modified form of the mandate principle by which the territories concerned were to be divided into three classes, the third class to include the territories desired by the Dominions, and to be "administered under the laws of the mandatory State as integral portions thereof." This proposal was reluctantly accepted by the Dominions. The following day the proposal was presented to the Council of Ten and was accepted by it, Wilson pronouncing the modified form, as presented in a resolution by Lloyd George, "a very gratifying paper."<sup>7</sup> Little change was made in the mandate provisions from January 30 to the adoption of the Covenant in its final form.

Did the compromise draft of January 30 incorporate the possibility of annexation in the third class of mandates? In the

<sup>4</sup>*Ibid.*, 1:257-258.

<sup>5</sup>*Ibid.*, and *The London Times*, Feb. 1, 1919.

<sup>6</sup>Thompson, Charles T., *The Peace Conference Day by Day*, p. 159.

<sup>7</sup>Baker, *op. cit.*, 1:272.

proposals heretofore set forth and discussed the two principles of mandate and annexation were admitted by all to be contradictory. Now a compromise, designed to satisfy the proponents of the mandate principle and those of annexation, had been devised and adopted. The mandates system, with the alterations noted, was tentatively accepted. The modifications had been in the direction of satisfying the demand of the British Dominions for outright annexation; and it went sufficiently far in that direction to secure their reluctant approval, but not far enough to satisfy them. Even after their acceptance of the modified scheme on January 30 they tried hard to set it aside in favor of annexation.<sup>8</sup> They still wanted annexation; apparently they thought they had not won in their attempt to secure the adoption of the annexation principle. Wilson, on the other hand, was willing to accept the modified principle; apparently he thought he had won over the principle of annexation and had excluded it from the colonial settlement completely. Further confirmation of his belief that he had excluded the principle of annexation from the settlement is to be noted in his comment on the provisions of Article XIX (now Article 22) when he presented the tentative draft of the Covenant to the Third Plenary Session of the Peace Conference on February 14. He said that the mandates system was "one of the greatest and most satisfactory advances that has been made" and that with the initiation of the mandates system "we are done with annexations of helpless peoples."<sup>9</sup>

Article 22 has been said by one eminent writer to read like an extension lecture.<sup>10</sup> There is some truth in this statement if it means that Article 22 is not concise and complete in all of its provisions. It has much loose language, and many gaps, some of which are very difficult to bridge. Thus, no mention is made of annexation, but the provision is inserted that mandated territory of the third class "can be best administered under the laws of the Mandatory as integral portions of its territory . . ." The question arises as to whether this

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<sup>8</sup>*Ibid.*, 1:274-275.

<sup>9</sup>Kluyver, Mrs. C. A., *Documents on the League of Nations*, pp. 14-15.

<sup>10</sup>Baty, T., "Protectorates and Mandates," *British Year Book of International Law*, 1921-22, pp. 108-121.



provision can be read in such a way as to carry the power of annexation. We have seen that the makers of the Covenant did not contemplate such a meaning to be given this language. The wording, however, if the provision is taken alone, seems to point strongly toward merger of the territory under mandate with the territory of the mandatory power. Of course, each mandate is granted subject to the fulfillment of certain conditions, and so the possibility is that certain of the laws of the mandatory power would have to be modified in their application in order to fulfill the conditions of the tenure of the mandate. If the laws of the mandatory power run counter to the provisions protecting the indigenous population it is not only not compelled to apply its own laws, but, in so far as such laws are contrary to the protective provisions, is prohibited from doing so. This has been recognized by the mandatory powers and by the Council in the provisions of the mandate texts, where it is provided that the mandatory power may apply its own laws to the mandated territory with such local modifications as may be deemed necessary, consistent with other provisions of the mandate text.<sup>11</sup> Likewise, the mandate text leaves it optional whether such laws shall be applied. They may be applied, but they do not "have to" be applied. Some may be applied, others not. Under such an arrangement, it is difficult to see how, in the absence of other provisions tending to place the mandated territory in the position of annexed territory, that the provision of Article 22 under discussion can be held to mean that the mandated territory of this class becomes an integral part of the territory of the mandatory power. The language of the Covenant is that the mandated territory can be best administered *as an integral part* (this apparently means that it can be best administered *as if it were an integral part*) of the mandatory power's territory, subject, of course, to the guarantees in favor of the native population.

On the other hand, the Covenant definitely sets forth the

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<sup>11</sup>Thus Article 2 of the Southwest Africa mandate text provides: "The mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory, subject to such local modifications as circumstances may require."

principle that the mandated territories are to be administered as "sacred trusts," that tutelage is to be exercised by certain mandatory powers, who derive their authority to administer such territories from a mandate conferred upon them by the League of Nations, which mandate they exercise "on behalf of the League." These provisions were in the original proposals for the mandates system in different wording, and they remained in the compromised text of the Covenant. The principle of trusteeship on behalf of the League seems to be the fundamental thing in the mandate proposal which the Dominions did not like, the thing which they considered contrary to their program of annexation, but it still remains in the Covenant and is an integral part of the mandates system as it operates. If it was contrary to the principle of annexation at that time, is it not still so?

It is necessary before proceeding further, however, to set forth the argument given on the question under consideration by the author of the compromise draft of the mandate article which first contained this language. In debate in the House of Commons relative to the Treaty of Versailles, on July 3, 1919, Lloyd George said: "There is no doubt at all that Southwest Africa will become an integral part of the Federation of South Africa. It will be colonized by people from South Africa. You could not have done anything else. You could not have set customs' barriers and have a different system of administration. The same thing applies to New Guinea, part of which is already under the administration of the Australian Commonwealth. You could not have had that part under one administration and the next part under another. It is so near the Australian Commonwealth that it was felt that it ought to be treated as if it were part of the Australian Commonwealth."<sup>12</sup> As we shall see later, separate administrative systems have been set up in the mandated territories; the mandated territory of New Guinea is administered separately from the territory of Papua, which is the part of New Guinea already under the administration of the Australian Commonwealth mentioned in the quotation. In view of these facts and of the fact that no arguments whatsoever are given to substantiate the statement about becoming

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<sup>12</sup>117 *House of Commons Debates*, 5 s., 1227-1229.

integral parts of the mandatory powers, it seems unnecessary to answer further the view expressed by the former British Premier.

In each case of mandate there is drawn up a special instrument defining specifically the degree of authority to be exercised. This instrument is either drawn up and accepted, or accepted after being drawn up by the mandatory power, by the Council of the League. This mandate text really defines in a more exact way the powers and duties of the mandatory power. In the "C" mandate texts the conditions stated by the Covenant to apply to the third type of mandate are specifically set forth. The mandate text provides that its provisions may not be changed without the consent of the Council. This provision implies that such terms can be changed with the consent of the Council. It would appear from the provision giving the Council power to determine the degree of authority, etc., to be exercised in a particular case, that the Council could re-determine or re-define the degree of authority to be exercised, though this is not clearly evident. The Council has acted upon the theory that it could authorize a change in the mandate text desired by the mandatory power, and also that a rather unusual instrument could satisfy the Covenant requirement.<sup>13</sup> The fact that a particular mandatory power can, with the aid of the Council, or vice versa, change the terms of the mandate, has led Professor Quincy Wright to say that perhaps sovereignty over a mandated territory lies in the mandatory power and the Council acting together.<sup>14</sup> The point is clear that the mandatory power holds its authority subject to the fulfilment of certain conditions, that those conditions cannot be changed without the consent of the Council, and that they can be changed with such consent.

Neither the interpretations given Article 22 during 1919 nor those given by the writers today are conclusive on its meaning. The author thinks the weight of opinion at the

<sup>13</sup>The cases referred to are the Tanganyika-Ruanda-Urundi boundary change and the acceptance of the Anglo-Iraq treaties as a mandate text.

<sup>14</sup>Wright, Quincy, "Sovereignty of the Mandates," *American Journal of International Law*, 17:691-703. He says: "The present writer believes that there will be a close approach to truth in ascribing sovereignty of mandated territories to the mandatory acting with the consent of the Council of the League." p. 698.

time the Article was drawn up substantiated the view that it was impossible to reconcile the principle of annexation with that of mandate as set forth and adopted. Since that time, however, it has been asserted at one time and another by a few people that "C" mandates amounted in practice to annexation. Some have contended that "veiled annexation" existed in the whole mandates system, but their use of the term annexation can hardly be taken to be legal or technical; they probably vaguely mean something similar to ruthless economic exploitation. From South Africa has come perhaps the most serious contention that practically *de facto* annexation is present in the "C" mandates. General Smuts has expressed the opinion that, "in effect, the relations between the Southwest Protectorate and the Union amount to annexation in all but name."<sup>15</sup> On another occasion, he expressed the view "that 'C' mandates are in effect not far removed from annexation."<sup>16</sup> Also, in September, 1926, one of the South African delegates contended in the Sixth Committee of the Assembly of the League that *de facto* annexation existed in the case of Southwest Africa.<sup>17</sup> In none of these statements is *de jure* annexation asserted to be present. They do not go much further than to say that the actual conditions of administration approach the conditions of administration of an annexed territory. Before proceeding to an examination of these actual conditions of administration, let us consider one more statement from General Smuts, which tends to put an even weaker interpretation on his statements quoted above than I have given them. In debate in the Assembly of the South African Parliament on the affairs of Southwest Africa, on July 13, 1925, Smuts said: "I should have preferred the two countries more closely linked up at this stage. When I urge this it may be said that I am working in favor of the annexation of Southwest Africa to the Union; but I am not. I do not think it is necessary for us to annex Southwest Africa to the Union. The mandate for me is enough. It gives the Union such complete power of

<sup>15</sup>Speech delivered at Windhuk, Southwest Africa, Sept. 16, 1920, according to report in the *Cape Times*, quoted in *Permanent Mandates Commission, Minutes of the Second Session*, Annex 6, pp. 92-93.

<sup>16</sup>Letter of July 4, 1922, to M. Rappard of the Mandates Section of the Secretariat, *ibid.*, p. 91.

<sup>17</sup>*Manchester Guardian Weekly*, Sept. 24, 1926, vol. 15, p. 248, col. 4.

sovereignty, not only administrative, but legislative, that we need not ask for anything more."<sup>18</sup>

If we examine the practices pursued in the administration of the "C" mandated territories, one of the most obvious facts that immediately appears is that they are not under the same governmental system as their respective mandatory powers. They are not treated as territory merged with that of the mandatory power under the same government. They have distinct administrative systems, are treated as separate administrative entities, although some of the relations between the system of the mandated territory and that of the mandatory powers are very close in each case. Confining our attention to two "C" mandated territories, Southwest Africa and Western Samoa, for illustrative purposes, we find that an Administrator responsible to the executive government of the mandatory power has been made the chief executive, legislative, and administrative official in both cases. Extensive powers of a semi-autocratic nature are given these Administrators, and a régime is present in each case which would be considered too undemocratic to be tolerated within the confines of the territory of either mandatory power.<sup>19</sup>

In both Samoa and Southwest Africa the laws of the mandatory power apply only when such is specifically provided in the laws themselves. This is, of course, not conclusive as to the status of the territories, but is merely indicative of the method that has been employed in both cases to give effect to the provision of the mandate texts that the mandatory power may apply its own laws to the mandated territory, with such local modifications as might be deemed advisable. The respective parliaments frequently provide for the extension of laws to the mandated territories, but in perhaps most cases such extensions, particularly of laws passed before the mandate period, are made by executive proclamation.

The judicial system in each case is very significant. In Western Samoa the High Court is given wide jurisdiction over

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<sup>18</sup>Union of South Africa, House of Assembly Debates, Second Session, Fifth Parliament, 1925, Vol. 5, 5930.

<sup>19</sup>For references on general facts of the administrative system and methods of each territory, see the list of Annual Reports given at the end of this article.



cases arising in the territory, and its connections with the judicial system of New Zealand are very close. Appeals can be taken from the High Court to the New Zealand Supreme Court in practically the same cases that they can be taken from the inferior courts of New Zealand proper.<sup>20</sup> Also, the New Zealand courts can take jurisdiction over individuals committing offenses against the law of Samoa when they are found in New Zealand. Decisions may be rendered by New Zealand courts, authenticated to the High Court of Samoa, and then executed by the latter court as its own judgments. The High Court can ask the Supreme Court for an interpretation or construction of a particular law, and it is then bound by the interpretation or construction handed down to it.<sup>21</sup> This is sufficient to indicate the close connections existing between the judicial systems of the two jurisdictions, although the jurisdictions themselves are clearly regarded as separate. The arrangement may be regarded as one of administrative convenience, and does not appear to contravene the principle of mandate; it has no necessary relation with a status of annexation.

In Southwest Africa the situation regarding the judiciary is very similar. There is a High Court as in Samoa, and in addition circuit courts. Appeals from the High Court and the circuit courts in both civil and criminal cases lie to the Appellate Division of the Supreme Court of South Africa under the same circumstances and subject to the same conditions as an appeal lies from a Provincial Division of the Supreme Court of South Africa.<sup>22</sup> Also, the High Court is made a division of the Supreme Court of South Africa in the meaning of Section 112 of the South Africa Act, 1909, by Section 5 of the Southwest Africa Affairs Act, 1922.<sup>23</sup>

The civil service in each case is very closely related to the civil service of the mandatory power. The officers of the

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<sup>20</sup>Samoa Act, 1921, Sections 83-97, *New Zealand*, 12 Geo. V. 1921, No. 16.

<sup>21</sup>*Ibid.*, Sections 80-82. Section 80 provides, in part, "The civil jurisdiction of the Supreme Court of New Zealand shall extend to Samoa, and may be exercised in New Zealand in respect of the Territory, in the same manner in all respects as if it was part of New Zealand."

<sup>22</sup>This puts the High Court in a relatively dignified position.

<sup>23</sup>*Statutes of the Union of South Africa, 1922 (No. 24)*, pp. 104-113.

administration in Southwest Africa are members of the Union Public Service, with some exceptions, and the Southwest Africa civil service is divided into the same departments as that of the Union. By the Union Public Service and Pensions Act, 1923, the public service of Southwest Africa was made part of that of the Union.<sup>24</sup> In Samoa the officials are very largely officials of the New Zealand Civil Service sent out from the Dominion, and operate under similar conditions of superannuation, vacations, etc.<sup>25</sup>

Each territory, however, has a separate budget of its own, into which are placed taxes levied and collected, income derived from other sources, and loans from the mandatory power. The money is spent for the purposes of the mandated territory in each case, and does not flow from the territorial treasury into the treasury of the mandatory power.<sup>26</sup> Some special cases regarding financial matters in the two territories are of sufficient importance to merit separate attention.

Relative to customs, Southwest Africa is practically a part of the Union of South Africa, as it also is for the purposes of the collection of excise duties. In the language of the Customs and Excise Duties Amendment Act, 1921, "the mandated territory of Southwest Africa shall, for the purposes of the collection of customs and excise duties, be regarded as a part of the Union."<sup>27</sup> The customs and excise duties collected in the territory go into the Consolidated Revenue Fund of the Union, but out of this fund there is annually paid towards the cost of the administration of the mandated territory a sum "which shall approximate to the customs and excise duties paid on goods consumed in such territory after deducting therefrom a sum equivalent to the said duties on goods removed from the said territory for consumption in the

<sup>24</sup>*Ibid.*, 1923, pp. 256-369.

<sup>25</sup>Samoa Act, 1921, Sections 9-26. See also The Appropriation Act, 1924, Section 16, *New Zealand, 1924*, No. 65, which applies the Public Service Classification and Superannuation Act, 1908, to the Samoan Public Service, to take effect Jan. 1, 1925.

<sup>26</sup>See detailed discussion of the financial problems in each territory, as they bear on the question of annexation, below.

<sup>27</sup>*Statutes of the Union of South Africa, 1921* (No. 35) pp. 182-209, section 27, sub-section 1.

Union."<sup>28</sup> So, it would appear that the mandated area gets the revenue due it from customs and excise duties, even though such revenue goes first through the South African Consolidated Revenue Fund.

Western Samoa has been placed under practically the same laws regarding customs as apply to the territory of New Zealand. In this respect, the situation is very similar to the one obtaining in Southwest Africa; but in another respect the situation is quite different. In the case of Samoa the revenues collected by way of customs duties go direct into the Samoan Treasury, and are never in the possession of the New Zealand Treasury.<sup>29</sup> Relative to excise duties and other taxes, the Samoan Administration levies them and collects them, without the interference of New Zealand officials. As far as formal arrangements are concerned, it would appear that the situation in Western Samoa is farther removed from a resemblance to annexation than the situation in Southwest Africa.

An important evidence of the lack of power of annexation is seen in connection with the inability of the mandatory powers to grant their own citizenship to the native inhabitants by any general compulsory process. The mandatory powers have very clearly recognized their lack of power to extend their nationality and citizenship to the natives of their "C" mandated territories, and the League of Nations Council and the Permanent Mandates Commission have taken the same view. Numerous statements have been made in this connection that cession of territory to the mandatory power has not taken place, and hence nationality cannot be imposed upon the natives of the territory. Of course, voluntary naturalization can be permitted the natives by the mandatory power.<sup>30</sup>

<sup>28</sup>*Ibid.*, sub-section 2.

<sup>29</sup>Samoa Customs Consolidation Order, 1923, *New Zealand Gazette*, No. 67, Sept. 6, 1923.

<sup>30</sup>See opinion of the New Zealand Attorney-General on the naturalization of inhabitants of Samoa, of September 30, 1919, and his opinion on citizenship of the natives of Samoa, of May 11, 1920, in *Permanent Mandates Commission, Minutes of the Second Session*, p. 67.

On April 23, 1923, the Council of the League passed a very important resolution on this subject, which merits quotation: "(1) The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the Mandatory Power and cannot be identified therewith by any process having general application. (2) The native in-

The Treaty of Versailles grants authority to the power administering former German colonies to grant its diplomatic protection,<sup>31</sup> but this does not mean that such power shall confer its nationality or citizenship upon such natives.

Allied to the problem of the nationality of the natives is that of the former European subjects of Germany resident in the mandated territory. The Treaty of Versailles gave authority to the power administering former German oversea territory to repatriate such nationals if it saw fit to do so.<sup>32</sup> In Western Samoa this power was put into execution and the territory was relieved of virtually all of its Germans.<sup>33</sup> In Southwest Africa, however, such a course of action was not feasible and was not employed. As the Germans remained in the territory, the problem arose as to their future, as well as present, allegiance. Their German nationality was not converted into British nationality *ipso facto* by the revocation of the German rights and titles over the territory, because there was no cession of territory to the Union. As these Germans remained German nationals, what could the Union do to cause them to look towards it for their future and their allegiance rather than to Germany? Smuts emphasized the importance

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habitants of a mandated territory are not invested with the nationality of the Mandatory Power by reason of the protection extended to them.

(3) It is not inconsistent with (1) and (2) above that individual inhabitants of the mandated territory should voluntarily obtain naturalization from the Mandatory Power in accordance with arrangements which it is open to such Power to make, with this object under its own law.

(4) It is desirable that native inhabitants who receive the protection of the Mandatory Power should in each case be designated by some form of descriptive title which will specify their status under the mandate." Quoted *American Journal of International Law*, 18:313. Cf. *League of Nations Official Journal*, 4:604.

See also the letter from General Smuts to the Chairman of the Permanent Mandates Commission, dated May 16, 1923. *Permanent Mandates Commission, Minutes of the Third Session*, annex 1, p. 215.

Oppenheim, *International Law*, Vol. I, p. 273, says: "As the object of cession is sovereignty over the ceded territory, all such individuals domiciled thereon as are subjects of the ceding State become *ipso facto* by the cession subjects of the acquiring State." Cf. *ibid.*, 355-7.

<sup>31</sup>Article 127.

<sup>32</sup>Article 122.

<sup>33</sup>*First Report . . . on the . . . Mandated Territory of Western Samoa*, p. 4.

of this problem in his Windhuk speech of September, 1920, mentioned above. He saw a possible solution of the problem by wholesale naturalization by a law of the Union Parliament. He ran into the difficulty, however, of the lack of jurisdiction of the mandatory power to do such a thing.<sup>34</sup> So, the law which he contemplated had to be made optional in character, and such a law was passed by the South African Parliament in 1924, the Southwest African Naturalization of Aliens Act. This Act provided that all European subjects of the late enemy powers domiciled in the mandated territory should automatically become British naturalized subjects after a period of six months from September 15, 1924, except those who signed a declaration within that time that they did not wish to become naturalized.<sup>35</sup> Thus automatic general naturalization was provided for, with the possibility of each individual German subject refusing to accept the new nationality.

Additional light is thrown upon our problem by the position of the mandatory powers regarding the land of the mandated areas. In both Southwest Africa and Western Samoa the status of land is in some respects similar to that of annexed territory. Let us take the situation in Western Samoa. In the first place, all native land, i.e., land held by the natives according to native custom and usage, is vested in the British Crown. The British Crown possesses title to all native land in trust for the natives. The natives are allowed to hold and

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<sup>34</sup>The lack of power of the mandatory powers to exercise complete control over the mandated territories has been interestingly set forth by a decision of the Supreme Court of South Africa. In the case of *Christian v. Rex*, 1923, it was held that Southwest Africa had not been ceded to the Principal Allied and Associated Powers. "The animus essential to a legal cession was not present on either side. For the signatories must have intended that such possessions should be dealt with as provided by Part I (the League of Nations Covenant) of the treaty and they were placed at the disposal of the Principal Powers merely that the latter might take all necessary steps for their administration on a mandatory basis. . . . The intention of the signatories seems to have been to place certain overseas possessions relinquished by Germany upon a basis new to international law and regulated primarily by Article 22 of the treaty." Quoted in Wright, Quincy, "Status of the Inhabitants of Mandated Territory," *American Journal of International Law*, 18:306-315, April, 1924.

<sup>35</sup>*Statutes of the Union of South Africa, 1924 (No. 30)*, pp. 124-127.



use the land according to their own customs and usages, and the laws in force in Samoa; they may not alienate it without the consent of the Administration of Western Samoa, representing the Crown. If consent is granted by the Administration for the purchase of native land, it may be purchased without native consent, and even contrary to native custom and usage. When land is thus sold, the government keeps the purchase price in trust for the native or natives from whom the land was purchased, and gives it to him only at such time as it sees fit.<sup>36</sup> While there is little evidence that the rights of the natives have been abused under this system, the legal situation is clear—and the legal situation is what is material to us here.

The situation is somewhat similar regarding the properties located in Samoa taken from the German Government and German nationals as part of the reparation settlement. The Peace Treaty allowed the taking of this property,<sup>37</sup> and New Zealand has done so. The estates formerly belonging to German nationals were taken over by the New Zealand Government during the military occupation, and were operated for profit, the proceeds going into a fund to be disposed of after the future of the territory was determined.<sup>38</sup> When the mandate had been granted and civil government set up, provision was made that the revenue derived from the confiscated estates might be used for the purposes of the Samoan Administration and the surpluses might be removed to the New Zealand Treasury, under certain conditions.<sup>39</sup> The estates were thus to be treated as property of the mandatory power, to be done with as it saw fit, and to be used partly for its own benefit. Good policy shortly after dictated the transfer of the benefits of the estate solely to the Samoan Treasury.<sup>40</sup> The position regarding land in Samoa has caused

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<sup>36</sup>Samoa Act, 1921, Sections 278-283.

<sup>37</sup>Articles 120, 257, and 297.

<sup>38</sup>Triggs, W. H., "Samoa Under New Zealand," *Quarterly Review* 238:235-251, October, 1922.

<sup>39</sup>The Samoan Crown Estates Order, 1920, clause 11. The Minister of External Affairs was empowered to issue warrants for such transfer.

<sup>40</sup>The Samoan Crown Estates Amendment Order, 1920, *New Zealand Gazette*, No. 98, Dec. 4, 1920. Clause 11 of the Crown Estates Order was revoked, and deemed to have had no force or effect.

some agitation in the Permanent Mandates Commission, some of the members of which have feared that such a situation lent color to the contention that the "C" mandates were but veiled or disguised annexations.<sup>41</sup>

In Southwest Africa the practice of declaring certain lands Crown lands has also been used. But much of the significance attaching to this appellation has been taken away by the declaration of the accredited representative of the mandatory power at the Sixth Session of the Permanent Mandates Commission that Crown lands meant lands belonging to the territory of Southwest Africa and not to the Union.<sup>42</sup> In case the mandate were to change this property would go with the mandated area, according to this interpretation. A land bank similar to that of the Union and under the same management and control has been set up in the territory.<sup>43</sup>

A special situation has arisen in Southwest Africa relative to the ownership of property in railways and harbors. By the Southwest Africa Railways and Harbors Act, 1922, provision is made that the government railways and harbors in the mandated territory as of January 10, 1920, became vested in the Railway Administration of the Union as part of the Union system. The railways and harbors were stated to be under the Union in "full dominion," in accord with which the loss arising from the working of the railways from August 1, 1915, to March 31, 1922, was made chargeable to the Union Railway and Harbours Capital Account and the revenues and expenditures thereafter were made chargeable to the Union Railways and Harbours Fund.<sup>44</sup> This Act takes the railways and harbors of the territory out from under the control of the Administration, and deprives it of the revenues derived from their administration. The net revenue which has been produced by these railways in recent years does not show at all in the budget of the territory. In view of the fact that some of the mileage of these roads, in fact most of such mileage, be-

<sup>41</sup>*Permanent Mandates Commission, Minutes of the Fifth Session*, pp. 53-54.

<sup>42</sup>*Permanent Mandates Commission, Minutes of the Sixth Session*, p. 66.

<sup>43</sup>*Southwest Africa Territory. Report of the Administrator for the Year 1920*, p. 3.

<sup>44</sup>*Statutes of the Union of South Africa, 1922 (No. 20)*, pp. 62-71.

longed to the territory before the war,<sup>45</sup> it is hard to see the legal justification for the above law. The Permanent Mandates Commission seems to have taken the view that "full dominion" cannot be reconciled with the provisions of the Treaty. In the Sixth Session of the Commission, the accredited representative of the mandatory power was questioned about this point. He very clearly stated that the term did not mean full ownership,<sup>46</sup> that the railways would revert to the mandated territory in case of transfer of the mandate, and that the railway system was called Union property merely for legal and administrative purposes.<sup>47</sup> In its report to the Council at the end of the Session, the Commission, although it accepted the explanation regarding the ownership of the railways and harbors, made the following observation: "The point has been raised as to whether, to avoid any misunderstanding in the future, it would not be advisable to amend the law of 1922 in order to bring the text into conformity with the interpretation which has been given by the Mandatory Powers."<sup>48</sup>

Two special administrative problems of a territorial character have arisen in connection with Southwest Africa. When one consults a map of this territory it is at once apparent that the Union territory of Walvis Bay is distantly located from any part of the Union, and that its administration could much better be carried on if it were made part of the territory of Southwest Africa. This has been done. By an Act of the Union Parliament of 1922 it was provided that the settlement of Walvis Bay should for judicial and administrative purposes be regarded as if it were part of the mandated territory, and as if its inhabitants were inhabitants of the mandated territory.<sup>49</sup> A Proclamation of the Governor-General of South Africa defined more specifically certain of the regulations that should be in force in the territory, effective October 1, 1922.<sup>50</sup>

<sup>45</sup>*Permanent Mandates Commission, Minutes of the Sixth Session*, p. 63.

<sup>46</sup>He had previously stated the situation quite differently. *Ibid.*, p. 59.

<sup>47</sup>*Ibid.*, p. 63.

<sup>48</sup>*Ibid.*, p. 178.

<sup>49</sup>*Statutes of the Union of South Africa, 1922 (No. 24)*, pp. 104-113.

<sup>50</sup>Proclamation No. 145 of 1922 (*Gazette*, Sept. 15, 1922). Cited, *ibid.*, p. 106n.

The Administrator proclaimed the laws of Southwest Africa in force in the territory of Walvis Bay, as of October 2, 1922. The territory was declared part of the district Swakopmund, and all laws to be enacted for the territory of Southwest Africa in the future were to be in force in the Bay, unless specifically excluded.<sup>51</sup> By the map one would see also that the long strip of territory running down to the Zambezi, known as Caprivi Zipfel, isolated as it is by desert country from the populous part of the Southwest, would present administrative difficulties. On the other hand, it is joined on the south by the Bechuanaland Protectorate, and could easily be administered as a part of that territory. With this in view, the Governor-General issued a proclamation in 1922 directing the High Commissioner of South Africa to administer that part of the mandated territory east of longitude 21° known as Caprivi Zipfel, and empowered to legislate therefor.<sup>52</sup> In the same years, the High Commissioner issued a proclamation providing for the administration of the territory as if it were a portion of the Bechuanaland Protectorate, and that the laws of the Protectorate should apply to the Zipfel.<sup>53</sup>

Thus, a portion of the mandated territory was removed from the regular administrative system set up to govern the territory, and was placed under the administrative system of a territory to which the guarantees of the Covenant do not apply and in which some of the provisions in favor of the natives in force in the other part of Southwest Africa probably are not in force. And the League has not in the past been presented with adequate reports of what is going on in this part of the mandated territory. Naturally, such a system of dealing with a part of the mandated territory would excite the attention of the watchful Permanent Mandates Commission. In the Sixth Session of the Commission the view was asserted by some of the members that such a system was clearly contrary to the mandate. Others thought it could be reconciled with the mandate if one went on the theory that the Union Government instructed the High Commissioner what to put

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<sup>51</sup>*Report of the Administrator of Southwest Africa for the year 1922*, p. 3.

<sup>52</sup>*Ibid.*, p. 2. Proclamation No. 12.

<sup>53</sup>*Ibid.*, p. 2. Proclamation No. 23.

into effect in the Zipfel in order to fulfill the obligations of the mandate and that the High Commissioner was bound to put such instructions into effect, in short, that he was in the same position as the Administrator of Southwest Africa, so far as his administration of the territory in question was concerned.<sup>54</sup> A report was later submitted to the Commission on the administration of the territory, but it was adjudged by the Commission as unsatisfactory.<sup>55</sup> The action of the mandatory power with respect to this territory seems to the author to violate the theory of the mandates systems, unless the theory be maintained that the High Commissioner is responsible to the Union for the execution of the terms of the mandate text in the Zipfel.

In the case of one of the territories under consideration, the point has been raised as to whether it could be incorporated with the territory of the mandatory power. It appeared that agitation existed in the Union for the incorporation of Southwest Africa with the Union. The view was expressed by Mr. Smit, the accredited representative of the Union to the Sixth Session of the Permanent Mandates Commission, that incorporation could come only by the process of development of self-government in the territory and a treaty of incorporation between it and the Union. Sir F. Lugard, one of the members of the Commission, expressed the view that even under the circumstances outlined by Mr. Smit, incorporation was not possible as long as the mandate remained in force. M. Rappard saw no objection to administrative incorporation, and M. van Rees approved this view, adding that if "incorporation would imply a change in the political and international status of Southwest Africa without this territory having yet reached a sufficiently high state of development to allow the mandatory to withdraw, such incorporation would amount, no doubt, to annexation, which would be an obvious infraction of the mandatory system."<sup>56</sup>

Responsibility of the mandatory power to the League of

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<sup>54</sup>Permanent Mandates Commission, *Minutes of the Sixth Session*, p. 61.

<sup>55</sup>Permanent Mandates Commission, *Minutes of the Seventh Session*, pp. 16-17.

<sup>56</sup>Permanent Mandates Commission, *Minutes of the Sixth Session*, pp. 59-60.



Nations for the things done or not done in the mandated area under its jurisdiction has been very clearly recognized by all concerned. The Bondelzwarts affair in Southwest Africa is a good illustration of the operation of this responsibility. Not only was the legal theory of responsibility present here, but vigorous action was taken by the League upon the basis of the legal theory. The responsibility to the League for the proper exercise of the trusteeship conferred was not a mere formality, but a very vital actuality. That South Africa accepted the right of the League to demand an explanation and to expect better future conduct is very strong evidence of the vitality and power of the League, as well as of South Africa's intentions to perform in a just manner the obligations which she has undertaken.

In conclusion, it is clear, I think, that in theory, in law, and in actual practice, the mandatory powers cannot, and have not, annexed territories entrusted to them under "C" mandate. It is true that in some respects the mandated territories have been treated as if they were annexed territories; but this treatment may be regarded as nothing more than administrative convenience, which is perfectly consistent with the mandate theory, except where otherwise indicated.

## THE POSITION OF THE STATE IN GERMANY

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### I. THE GENERAL RELATIONSHIP

Germany is a federal commonwealth, composed of eighteen member states, most of which have been political units for a sufficient period of time to have acquired a sense of individuality. One of the most important problems which had to be faced in connection with the making of the National Constitution of 1919 was the relation between the member states and the commonwealth or Reich. While the prevailing sentiment in the National Assembly that prepared and adopted the Constitution favored national unity and a strong central government, which was commonly agreed to be Germany's only hope for recovery after her overwhelming military, economic, financial, political, and social disorders and distresses, yet there was not lacking a powerful influence in favor of protecting the states in their identities, and in as many powers and functions as possible. Several constitutional provisions are obvious compromises between these two contending forces.

Every state is required by the Constitution to have a republican constitution for its own government, with a cabinet which must have the confidence of the representatives of the people. The usual immunities from arrest, prosecution, and the like, are guaranteed to popular representatives in the states. These representatives must be elected by the universal, equal, direct, and secret suffrage of all German citizens (not merely citizens of the state which happens to be electing the popular house of its legislature) according to the principles of proportional representation. The same provisions are to apply to municipal elections, except that in this case the state may require by law a residence qualification of not more than one year in the municipality.<sup>1</sup>

An apparent victory for the states is found in the fact that the Reich possesses only such powers as are specifically as-

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<sup>1</sup>Constitution, Articles 17, 36-39.

signed to it in the Constitution, while the states possess all other sovereign rights and powers. Examination proves, however, that this appearance is illusory, since the powers given to the Reich leave the state in a decidedly subordinate situation.

The states as such have no share in the work of amending the National Constitution. This power, which German jurists call the "Competence of Competence," is fundamentally in the hands of the national legislative body, the Reichstag. A suspensive veto over constitutional amendments, and the right of referring them to the people in case of a deadlock, is given to the Reichsrat, the organ in which the states are represented; but in no case are the state governments or any special agencies of the states given an opportunity to express themselves upon them. This means that the national legislature may change the relationships existing between the nation and the states whenever it deems such changes politically possible and desirable.

An important power of the central government is that of making territorial changes affecting the states. The Constitution lays down the principle that the division of the Reich into states shall serve the economic and cultural advancement of the people, with especial consideration of the wishes of the population affected. The national legislature may alter state boundaries or create new states within the Reich, by means of constitutional amendments; or, if the consent of the states directly affected is given, by means of an ordinary law. If one of the states affected refuses formal consent to the change, it may still be made by ordinary national law, if the population concerned desires it and if a "preponderant interest of the nation" makes it necessary. A plebiscite is ordered by the national cabinet, either on its own initiative or upon the demand of one-third of the electors in the territory to be separated, in order to ascertain the wishes of the people. If their consent is established, the cabinet must introduce into the Reichstag a bill proposing the alterations. Controversies over property which may arise in connection with territorial changes are to be decided, upon complaint of either party, by the supreme judicial court.<sup>2</sup>

<sup>2</sup>*Ibid.*, Article 18; RGBl., 1922, I, 545.

If the population of other territories than those of the present states shall request incorporation into the Reich, a national law may effect this. Any treaty with a foreign government which involves territorial changes is to be made by the national government, with the consent of the state affected. A national law is required for any alteration of boundaries, except boundary adjustments in uninhabited regions.<sup>3</sup>

Since the Constitution was adopted, several small states have been united to form the State of Thuringia; Coburg has been joined to Bavaria, and Pyrmont has been united with Prussia. In each of these cases the change was made by national law with the consent (really at the request) of the territories concerned.<sup>4</sup>

The powers which are entirely removed from the states by the Constitution and given exclusively to the Reich, are as follows: Foreign and colonial affairs; citizenship; freedom of travel and residence; immigration, emigration, and extradition; national defense; coinage, customs, posts, telegraphs, and telephones. All of these are so clearly appropriate to centralized control, that the states can hardly feel themselves deprived of any right which they ought in reason to possess, if the Reich is to be a true national unity; even though several of these powers have hitherto been exercised by them in whole or in part.

Concurrent legislative power of the Reich and the states is exercised in the following matters:<sup>5</sup>

1. Civil law.
2. Criminal law.
3. Judicial procedure, including the execution of justice; as well as official assistance by one public authority to another.
4. Passports and police supervision of aliens.
5. Poor relief and vagrancy.
6. The press, the right of association, the right of assembly.
7. Problems of population, the protection of maternity, infancy, childhood, and adolescence.

<sup>3</sup>*Ibid.*, Articles 2, 78.

<sup>4</sup>RGBl., 1920, I, 841, 842; RGBl., 1922, I, 281.

<sup>5</sup>*Constitution*, Article 7.

8. Public health, veterinary regulations, and protection of plants against disease or injury.

9. The right to work, insurance and protection of workers and other employees, and employment exchanges.

10. The organization of professional associations extending over the Reich.

11. The care of discharged soldiers and their dependents.

12. The law of expropriation.

13. Socialization of natural resources and of economic undertakings, as well as the manufacture, production, distribution, and price-fixing of economic goods destined for public use.

14. Commerce, weights and measures, the issue of paper money, banking, and stock and produce exchanges.

15. Commerce in foodstuffs and food luxuries, as well as in commodities of daily use.

16. Industry and mining.

17. Insurance.

18. Maritime commerce, deep-sea and coast fisheries.

19. Railways, internal navigation, motor traffic by land, sea, and air, and the construction of roads for general traffic and national defense.

20. Theaters and cinematographs.

The Reich also has jurisdiction over taxation and other sources of income, in so far as it claims them in whole or in part for its purposes: though it must consider the financial needs of the states if it claims any source of revenue which formerly belonged to the states.<sup>6</sup> This somewhat drastic provision, which gives to the Reich almost unlimited power<sup>7</sup> in the very vital matter of public finance, was made necessary by war reparations and other financial obligations, and the uncertainties of the national financial situation when the Constitution was adopted.

Concurrent jurisdiction is exercised according to the following principles: Jurisdiction in matters which are not

<sup>6</sup>*Ibid.*, Article 8.

<sup>7</sup>For the extent to which this power has been exercised see the law concerning the distribution of taxes between the nation, states, and communities (*Finanzausgleichsgesetz*) of May 27, 1926. *RGBl.* Part I, p. 203ff.



given exclusively to the Reich is to remain with the states so long and in so far as the Reich does not exercise its jurisdiction. If state and national laws conflict, the latter are to be supreme. If there is any doubt or difference of opinion, as to the existence of a conflict between state and national law, the supreme judicial court of the nation may be called upon for a decision.<sup>8</sup>

State laws which deal with the socialization of natural resources and business undertakings, as well as the production, manufacture, distribution, and price-fixing of economic goods for the community, may be vetoed by the national cabinet if such laws affect the general welfare of the nation.<sup>9</sup>

The "permissive" authority of the Reich consists of jurisdiction over the promotion of social welfare and the protection of public order and safety, whenever there is a necessity for uniform rules.<sup>10</sup> Since no authority except the national legislature itself can decide what matters are included under the term social welfare, what measures are appropriate to the protection of public order and safety, or when the necessity exists for taking action to secure these ends, this authorization amounts to almost a "blanket clause" bestowing extremely broad powers upon the Reich. Nearly any measure which the national legislature might wish to pass could be described as falling within the scope of this article. Since Article 14 of the Constitution provides that unless other special arrangements are made, the states administer national laws, sweeping changes in their administration might be effected by imposing upon them the administration of functions which could be carried out only after extensive departmental reorganization.

The normative authority of the Reich, which is bestowed in Articles 10 and 11 of the Constitution, consists in its power to establish fundamental principles. It may establish such principles in regard to the following matters:

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<sup>8</sup>*Ibid.*, Articles 12 and 13.

<sup>9</sup>This veto acts to prevent a law from going into effect, but does not repeal a law already operative. See Anshütz, *Die Verfassung des Deutschen Reichs*, p. 45.

<sup>10</sup>*Constitution*, Article 9.

1. The rights and duties of religious associations.
2. Education, including higher education and scientific libraries.
3. The law of officers of all public corporations.
4. The land law, the distribution of land, settlements and homesteads, restrictions on land ownership, housing, the distribution of population.
5. The disposal of the dead.

The Reich may also prescribe by law fundamental principles concerning state taxes, which will be discussed later.

In this division of competence between the nation and the state, obviously the lion's share falls to the nation. There is no important matter which the nation cannot control, either directly or by the use of its normative authority, within the limits set by the Constitution.

It is true that one house of the national legislature (if one wishes to consider the Reichsrat as a part of the legislative authority) is composed of members who represent their own states, in distinction from the house which represents the citizens of the nation as a whole. The power of the Reichsrat to check legislation which might seem undesirable from the point of view of the states is, however, extremely limited.

When it is remembered that the Civil Code, the Criminal Code, and the Commercial Code are no longer under individual state legislation, the sphere of state legislative activity is practically reduced to legislation concerning:

1. Self-organization (under the limitations of the Constitution).
2. Agriculture and like sources of gain, including forestry, but exclusive of the state labor law.
3. Arts and crafts.
4. The welfare system and police (safety and order police alone, since the criminal police are largely under the control of the Reich. See law of July 21, 1922, RGBI, I, p. 593, p. 597; 1924, I, p. 84, p. 270; 1926, I, p. 402.
5. The dwelling and settlement system, with some limitations.
6. The law of officers, with certain limitations, particularly in respect to salary and tenure.
7. Affairs of local self-administration.

8. Legislation concerning church and schools, with some limitations.

9. Taxation, with very severe limitations; as to kinds of tax, amount, methods of assessment, and distribution.<sup>11</sup>

But even within these spheres of legislative activity, as has been mentioned above, there are possibilities of intervention by national legislation.

It is hardly necessary to point out the fact that in so far as the states possess legislative powers they have corresponding administrative powers. In some cases they administer directly, but in general they delegate the details of administration to various local authorities over which they exercise a strong centralized supervision and control.

## II. ADMINISTRATIVE FUNCTIONS

The Constitution provides that the laws of the nation are to be administered by the state authorities, unless other arrangements are made by national law.<sup>12</sup> Such administration by the state is supervised by the national cabinet, which may issue general directions, or for the sake of closer supervision may send commissioners to the central authorities of the states, and with their permission to the subordinate authorities. If the national cabinet observes faults in the execution of national laws by a state, it notifies the state government, which is obliged to correct the faults. In the issuing of general administrative regulations for the execution of national laws by the state authorities, the cabinet must obtain the consent of the Reichsrat.<sup>13</sup> Methods of compelling performance on the part of the state will be discussed later.

The administration of national laws by the states is much less extensive than might be supposed from the general language of the Constitution in authorizing it, since in practice the laws themselves have frequently provided for other agencies and methods of administration. The Reich admin-

<sup>11</sup>See Hatschek, *Deutsches und Preussisches Staatsrecht*, I, p. 91; also Stier-Somlo, *Reichs-und Landesstaatsrecht*, I, pp. 386ff.

<sup>12</sup>*Constitution*, Article 14.

<sup>13</sup>*Ibid.*, Article 77.

isters many important functions directly through its own agents. Some of these, such as national taxation, foreign affairs, and national defense, are administered by the Reich exclusively; others are administered by it only in part. In the latter class may be mentioned insurance, public health, the regulation of business and commerce, public records and statistics. Mention should be made in passing, of the fact that certain important economic enterprises controlled by the Reich are not administered directly by it nor yet by the states, but by such agencies as holding companies or stock companies in which the Reich owns a part, a majority, or all of the stock.

Scattered throughout the Constitution are various provisions which serve as limitations upon the legislative or administrative freedom of the states. Among them may be mentioned the following:

Every German has the same rights and duties in each state of the Reich, as the citizens of that state (Art. 110). Rights of travel and residence, sojourn and settlement, the right to acquire land and to pursue any gainful occupation may not be limited in any other way than by national law (Art. 111). Those groups of the people who speak a foreign language may not be interfered with in their free development, by legislative or administrative action; especially in connection with the use of their mother tongue in the schools, or in the matter of internal administration and the administration of justice (Art. 113). Citizenship in the states as well as in the Reich is a matter for national legislation (Art. 110). Municipalities and unions of municipalities have the right of self-government within the limits of the laws (Art. 127). All citizens without distinction are eligible for the public offices in accordance with legal principles and suitably to their own ability and experience. All discriminations against women in the civil service are abolished. The status of civil servants is regulated by national law (Art. 128).

The officers directly charged with the administration of national affairs in a state shall as a rule be citizens of said state; and in so far as possible they shall, if they prefer, be employed in the districts where they reside (Art. 16).

The states may make treaties with foreign countries over matters falling within their jurisdiction, such treaties to be

subject to the assent of the national government (Art. 78). In order to secure the representation of interests which arise from the special economic relations of individual states to foreign countries, or their geographical proximity, the necessary arrangements and measures are to be fixed by the national government in agreement with the states affected (*Ibid.*).

Organization for national defense is to be regulated by national law, uniformly, yet with regard to the peculiarities of the inhabitants of the various states (Art. 79). Though customs and consumption taxes are to be administered by the national authorities, arrangements are to be made in this connection whereby the states shall be enabled to guard their special interests in the domain of agriculture, commerce, business, and industry (Arts. 82, 83).

All products of nature and industry, as well as works of art, which are subjects of free commerce within the Reich, may be transported in any direction across state and municipal boundaries. Exceptions may be made by national law (Art. 82).

Section VII of the Constitution, comprising Articles 102-108, deals with the administration of justice. It limits the states in several particulars, as by requiring them in case of reorganization of courts or of judicial districts which involve the transfer of officials to other courts, or their removal from office, to allow full pay (Art. 104) ; and by requiring the establishment of administrative courts in both the Reich and the states, for the protection of the individual against orders and decrees of administrative authorities (Art. 107).

The states retain direct administrative powers over matters entirely within their jurisdiction ; or matters as to which they have concurrent jurisdiction and on which the nation has not yet acted. They legislate in detail upon matters as to which the nation lays down guiding principles, such as education, and they also administer these functions. They retain control over their subordinate administrative agencies and authorities, which are not subject to the administrative control of the Reich except by permission of the states (Art. 15). Municipal administration is under state control.



## III. TAXATION AND THE STATES

It is impossible within the limits of this paper to discuss the administration of special functions; but the taxation system is a matter of such exceptional importance as to warrant at least a cursory survey of its chief features as they affect the states.

The Constitution of 1919 gave the nation the exclusive right of legislation in regard to customs, including uniformity in customs and commercial districts and the free transit of goods; and it provided specifically for the administration of customs and excises by the national authorities, after a reasonable transition period.<sup>14</sup> The nation received the power of legislation as to taxes or other revenues in so far as it might claim these in whole or in part for its own purposes;<sup>15</sup> and the power to prescribe by law fundamental principles with respect to the imposition and collection of state taxes in order to safeguard important social interests, or in order to prevent:

1. Prejudice to the national revenues or the commercial relations of the Reich.
2. Double taxation.
3. Levies on public communications or institutions which are excessive or which interfere with communication.
4. Discriminatory taxes upon imported goods as against domestic products in interstate or local commerce.
5. Export premiums.<sup>16</sup>

The Constitution furthermore requires the regulation by national law of the following matters:

1. The organization of the tax administration of states, in so far as this is requisite to the uniform and impartial execution of national tax laws.
2. The organization and powers of the authorities empowered to supervise the execution of the national tax laws.

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<sup>14</sup>*Ibid.*, Articles 6, 83, 169.

<sup>15</sup>*Ibid.*, Article 8.

<sup>16</sup>*Ibid.*, Article 11.

3. Accounting with the states.
4. The reimbursement of administrative expenses incurred in the execution of the national tax laws.<sup>17</sup>

Other constitutional provisions dealing with taxation give to religious associations organized as public corporations the right to levy taxes on the basis of the civil tax lists in accordance with the provisions of the laws of the states;<sup>18</sup> provide that the financial needs of the states must receive due consideration if the Reich lays claim to taxes or other revenues which formerly belonged to the states;<sup>18a</sup> and stipulate that in the administration of national taxes by national authorities, the special interests of the states as to agriculture, commerce, trade, and industry shall be safeguarded.<sup>19</sup>

Acting upon its constitutional authority, in 1919 the Reich took into its own hands the administration of the entire national tax system. A uniform tax code was established, which governs the entire financial procedure.<sup>20</sup> The system has been considerably developed through new laws in respect to valuation and other phases of administration.

At present the Reich administers not only all the taxes and customs appertaining to the national treasury, but several others which, though nominally national taxes, are turned over to the states and municipalities *in toto* except for a small deduction (usually 4 per cent) to cover the costs of administration.

According to the latest national law regulating the tax distribution between the nation, the states, and the municipalities,<sup>21</sup> the states and municipalities are authorized to levy taxes according to state laws, in so far as these do not contravene the national Constitution and national law (No. 1). The claim of taxes for the nation excludes the raising of like

<sup>17</sup>*Ibid.*, Art. 84. The Tax Code of 1919 has in part fulfilled and in part supplanted these provisions. For discussion see Poetzsch, *Vom Staatsleben*, etc., in *Jahrbuch des öff. Rechts der Gegenwart*, 1925, p. 231.

<sup>18</sup>*Ibid.*, Article 137.

<sup>18a</sup>*Ibid.*, Article 8.

<sup>19</sup>*Ibid.*, Article 83.

<sup>20</sup>*Reichsabgabenordnung* of December 13, 1919, RGBL., pp. 1993-2100, hereafter cited as RAO.

<sup>21</sup>*Law* of April 27, 1926, RGBL., Vol. I, pp. 203ff.

taxes by the state and municipalities, unless a national law prescribes otherwise; and the laying of increases upon the national taxes by states and municipalities is only permitted through national legislative authorization (No. 2). State and community taxes which tend to injure the tax income of the nation are not to be raised, if the predominant interests of national finance forbid (No. 3); and tax provisions of states or municipalities which contravene these provisions must be repealed or changed (Nos. 4, 19). In general, new taxes projected by the states and municipalities must be laid before the national minister of finance for approval (No. 5); and differences of opinion between a state administration and the national minister of finance as to whether a given provision of a state law is in harmony with the national law are decided by the national finance court; while a question as to whether state or municipal taxes are likely to injure the tax income of the nation, or whether the interests of national finance are in opposition to the raising of the tax, is decided by the Reichsrat (No. 6).

The states are given the right to raise land and building taxes, which they may wholly or partially give over to their municipalities (No. 8). The law lays down various standards as to the position of the municipalities in regard to taxation (Nos. 8, 14, 40, 45), thus establishing a certain degree of control over them. The states may raise a motor vehicle tax (No. 13) but the nation requires the use of the proceeds for the benefit of public highways. There are several other regulations governing the taxes which states and municipalities may raise (Nos. 15, 18).

This law specifies the extent to which the states shall participate in the taxes raised by the nation,<sup>22</sup> the methods by which the income taxes are to be apportioned, the conditions under which states and communities may raise additional taxes, and the circumstances under which taxes raised by the nation shall be turned over to the states and municipalities.<sup>23</sup>

<sup>22</sup>It is interesting to note in this connection that the income of several national taxes, including the land value tax, the motor vehicle tax and the race track gambling tax, are given over entirely to the states and their municipalities, except for the 4 per cent deducted by the nation to pay the costs of collection.

<sup>23</sup>For greater details see Nos. 21-53 of the above law.

If the nation requires the states and municipalities to assume new functions, means must be provided enabling them to do so (No. 54). If individual states are required to incur extraordinary expenses because of national treaties, laws or administrative measures, the nation assumes the costs or makes special provision by which they can be met (No. 55).

The nation guarantees to the states, under conditions fixed by law, a portion of the income tax, the corporation tax, the tax on the income of capital, and the inheritance tax, equal to the sums which the states have hitherto derived from these taxes. In case a state considers that this guarantee is not properly fulfilled, it petitions the national minister of finance for an increased apportionment. If the state authorities and the minister of finance cannot reach an agreement on this matter, the Reichsrat decides (Nos. 58, 59). The minister of finance and agencies authorized by him are empowered to demand from the state and municipal authorities information concerning the state and municipal taxes, and to investigate their budgets and yearly accounts (No. 61).

An elaborate administrative machinery is established by the tax code. Under the national minister of finance stand in hierarchial order the state tax offices and the local tax offices, both of which are federal agencies. The settlement of legal questions involved in tax administration is the function of the finance courts and the national finance court. The states may establish independent agencies for the administration of such taxes as lie wholly within their jurisdiction, and they do so as a rule; but since the federal machinery exists, and since it is authorized to administer state and local as well as church taxes, upon request, it is sometimes employed for this purpose.

In the establishment of the tax districts, the financial offices, and the various advisory committees and valuation committees connected with the taxation process, states and localities as well as professional associations participate. Through the committee system, which calls laymen of the locality to assist in tax evaluation, assessment, and other functions, the assurance is given that state and local considerations will not be entirely disregarded in tax administration. The right to hearing and redress through the financial courts, the national tax

authorities, and the Reichsrat, in case of injury, is also secured the states and the subordinate units of government.

#### IV. THE REICHSRAT AND THE STATES

According to Article 60 of the National Constitution, the Reichsrat is established to represent the German states in national legislation and administration. While the national President, the Reichstag, and the Cabinet are representatives of national unity, the Reichsrat, at least in its composition, is established upon and expressive of the federal principle. In its corporate character, however, it is a national organ, and not an organ of the states. This is implied not only from its name, but also in the Constitutional provision that "public power is exercised in national affairs by national organs in accordance with the national Constitution."<sup>24</sup> The Reichsrat, then, is a dualistic institution, a national authority, yet representing the states. It is the organ through which, to borrow an expression from Dr. Oppenheimer, the "centrifugal and centripetal forces," resulting from the strong feeling of local sentiment along with the need for great centralization, "are reduced to equilibrium."<sup>25</sup>

The Reichsrat, which must be convened by the national cabinet at any time upon the demand of one-third of its members, is a permanent council.<sup>26</sup> Ordinary sittings of the Reichsrat are called by the cabinet and the suspension of its sittings for a determined period of time requires the consent of the cabinet.<sup>27</sup>

The states are represented in the Reichsrat by members of their cabinets, except for Prussia, where one-half of the votes are at the disposal of the provincial administrations. Each state may send as many representatives to the Reichsrat as it has votes. One vote is allowed to each state, regardless of its size. No state, however, is to possess more than two-fifths of

<sup>24</sup>*Constitution*, Article 5.

<sup>25</sup>Oppenheimer, *The Constitution of the German Empire*, p. 110.

<sup>26</sup>*Constitution*, Article 64 and *Geschäftsordnung*, No. 2, in *Reichszentralblatt*, 1919, p. 1521.

<sup>27</sup>*Geschäftsordnung*, No. 2.



all the votes, and no state shall have more than one vote in any committee of the Reichsrat.<sup>28</sup>

The Reichsrat does not function as an upper legislative chamber. Its duty is to assist in the process of legislation rather than to share in it upon equal terms; and its particular task is to represent the point of view of the states in regard to proposed national laws. It has, however, a very real influence in legislation, due to (a) the fact that its consent is required to bills which the Cabinet proposes to introduce into the Reichstag, (b) the provision of a means by which its wishes may be presented to the Reichstag even though the Cabinet does not agree, (c) the right of "suspensive veto" against ordinary laws, and (d) the power of demanding a popular referendum upon constitutional measures.

This influence is greatly strengthened by the personal qualities of its members. Since the Reichsrat is composed of members of state ministries, their familiarity with the needs and desires of the states and their knowledge of the actual operations of state government enable them to speak with authority and to be heard with respect. Further, their popular support, combined with high educational qualifications, training, and experience, give them added prestige.

The relationship of the Reichsrat to the Cabinet constitutes yet another line of influence. The fact that Cabinet members hold chairmanships in the Reichsrat and its committees and have the right to be heard at any time during the deliberation, not only gives the ministers an advantageous position for securing consent to their proposals, but makes it quite impossible for them to escape some modification of their own views, opinions and plans, in the face of the immediate practical knowledge of state needs and public sentiment possessed by members of the Reichsrat. The constitutional provisions that ministers must participate in the deliberations of the Reichsrat upon demand, must keep it informed about national affairs, and must consult its appropriate committees upon important matters, further strengthen the position of that body. Both con-

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<sup>28</sup>*Constitution*, Articles 61-63. An amendment to Article 61 (RGBl., 1921, p. 440), gives one vote to each 700,000 inhabitants of a state, or major fraction thereof; thus allowing each Prussian province to have a representative in the Reichsrat, Poetzsch, *Vom Staatsleben*, etc., p. 226.

stitutional and extra-constitutional factors combine to make the Reichsrat a real factor in legislation.

The administrative powers of the Reichsrat are quite extensive. Some of these are granted in the Constitution, and others by national laws.

While the Reichsrat has no general ordinance power, such power now belonging to the Cabinet, in two cases the Cabinet is required by the Constitution to secure the assent of the Reichsrat before issuing ordinances. Its assent must be obtained to ordinances concerning federal laws where the execution is left to state authorities.<sup>29</sup> In this way the coöperation of the states in laying down principles and framing regulations according to which their own officials must carry out the laws, is obtained in advance, since the members of the Reichsrat are high state officials. Not only is a better working relationship obtained as a consequence, but a great deal of objectionable bureaucratic control is obviated. The rules and regulations will inevitably be framed much more in accordance with the facts of actual state administration than would otherwise be the case.

In the second place, its assent must be secured to ordinances which prescribe rules and establish the rate schedule for the postal, telegraph, and telephone services, as well as those which regulate railway construction, management, and operation.<sup>30</sup> The coöperation of the Reichsrat is also required by the Cabinet in its work of organizing advisory councils on railways, waterways, postal, telegraph, and telephone services.<sup>31</sup> These arrangements greatly lessen the chief objection to centralized control, namely, the inability of those most vitally interested in rates because of geographical situation, to participate effectively in their establishment.

Through recent national laws, certain powers of decision and assent are given to the Reichsrat. Thus, as has been mentioned above, in the law governing the distribution of taxes between the nation and the state, the Reichsrat is given the right to say, in case of conflict, whether state or municipal

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<sup>29</sup>*Ibid.*, Article 77.

<sup>30</sup>*Ibid.*, Articles 88, 91.

<sup>31</sup>*Ibid.*, Articles 88, 93, 98.

taxes are likely to injure the national tax income, or whether they are against the financial interests of the nation.<sup>32</sup>

The appointing and nominating powers of the Reichsrat are quite important. It exercises such powers in regard to some twenty-four courts, councils, committees, and the like, which administer special functions, manage business enterprises, and perform other significant public services. The Reichsrat thus secures a certain degree of control over public administration, which is strengthened when its appointees are chosen from among its own members.

## V. NATIONAL CONTROL OVER THE STATES

### A. *Legislative and judicial control*

The Constitution states briefly: "National law supersedes state law." In order to make this subordination of state law effective, the following provision is added: "In case of doubts or differences of opinion as to whether a provision of state law is consistent with national law, the competent central authority of nation or state can appeal to the decision of a national supreme judicial court, according to the more specific provisions of national law."<sup>33</sup> A more general provision is found elsewhere:<sup>34</sup> "In constitutional controversies arising within a state where no court exists for their settlement, and also in controversies not of a private-law nature between different states or between the Reich and a state, the supreme judicial court of the nation shall decide the matter upon the application of either party to the controversy, in so far as no other national court is competent.

"The national President shall execute the judgment of the supreme judicial court."

Judicial control over the administration of national laws by the states is established by another article (15, par. 3), as follows:

<sup>32</sup>RGBl., 1926, p. 203, No. 6.

<sup>33</sup>Constitution, Article 13.

<sup>34</sup>*Ibid.*, Article 19.

"The state governments are obliged, upon request by the national government, to remove defects that appear in the administration of the national laws. In case of differences of opinion, the national government as well as the state government may appeal to the decision of the supreme judicial court, in so far as another court is not designated by national law." Differences of opinion between a state administration and the national minister of finance as to whether a given provision of a state tax law is in harmony with the national law are decided, it will be remembered, by the national finance court.

The great German jurist Triepel, in commenting upon these constitutional provisions, points out the significant fact that in Article 13 no provision is made for execution, and remarks that this gives the losing party an opportunity to withdraw gracefully before the other needs to have recourse to Article 19. After discussing at considerable length the articles quoted, he makes the following pertinent comments upon the supreme judicial court:

The possibility of appeal to the supreme judicial court gives to the Reich and to the states an equally strong weapon. . . . More than through anything else whatever, an equal balance between central and state powers was established through it. . . . The establishment of the supreme judicial court . . . is of primary benefit to the states. The protection of the individual states against arbitrary action on the part of the Reich—that is a principal duty of the supreme judicial court.<sup>35</sup>

Not only the supreme judicial court, however, passes on questions of constitutionality. Article 19 expressly provides that it shall take jurisdiction only when no other court is competent, and only where questions of public law are involved. May other courts decide generally upon the compatibility or incompatibility of state laws with national laws or the national Constitution; and may they do so even when the issue is raised in a suit by a private individual? A decision of the criminal chamber of the national court (Reichsgericht)

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<sup>35</sup>Triepel, Heinrich, "Streitigkeiten zwischen Reich und Länder," in *Festgabe der Berliner Juristischen Fakultät für Wilhelm Kahl*, April, 1923, pp. 115, 116.

which was rendered in December, 1921, answers both of these questions in the affirmative. Private individuals claimed that a state law of Württemberg, which had been enforced to their injury, was incompatible with the provisions of the national Constitution. In a long and carefully reasoned opinion, the court made the following statement, the very general and comprehensive language of which is noteworthy:

The judge is authorized and obligated to examine into the norms of every sort set by state law—including those set by the state constitutions and laws amending the constitutions—to establish whether or not they conflict in form or in substance with a national statute, with a legal ordinance of the nation, or with the common law of the nation; and . . . he must refuse to enforce them if they do.<sup>36</sup>

*B. Administrative control by the Cabinet*

It was mentioned earlier in this study that unless some other provision is made, the laws of the nation are to be carried out by the states. The national Cabinet supervises the administration of all national laws, and it may issue general directions for this purpose. It may also send supervising commissioners to the central authorities of the states, and with their consent, to the subordinate authorities. General administrative regulations concerning laws which are administered by the state authorities require the consent of the Reichsrat.<sup>37</sup> Subject to constitutional provisions as to the consent of the Reichsrat, the national Cabinet is given the general authorization to issue ordinances, which formerly belonged to the Bundesrat (Art. 179).

This supervisory power and ordinance power, while bestowed upon the Cabinet as a whole, is naturally exercised under ordinary circumstances by the individual minister to whose department a given subject of administration belongs. In cases before the supreme judicial court, however, neither individual ministers nor entire cabinets appear as parties; but always the Reich and the state concerned.

<sup>36</sup>*Entscheidungen des Reichsgericht, Strafsachen*, 56, pp. 177ff.

<sup>37</sup>*Constitution*, Articles 15 and 77. German writers do not agree as to whether the "directions" mentioned in the former article are identical with the "administrative regulations" in the latter.



In practice the relation between the National Cabinet and the states is much closer than would appear from the constitutional provisions. The interplay between the Reichsrat and the Cabinet members who preside over it and its committees, the discussions incidental to the introduction into the Reichstag by the Cabinet of a bill desired by the representatives of the state governments who compose the Reichsrat, and the deliberations concerning ministerial ordinances to which the consent of the Reichsrat is needed, will tend to prevent too great a separation or opposition of national and state authorities.

As in all political relationships, that between the national Cabinet and the states is adjusted to some extent by other than purely formal methods. A letter from a member of the national Cabinet to a member of a state cabinet is neither direction, regulation, nor ordinance; it is not provided for in the Constitution; yet how efficacious it may be, one may judge in reading the following excerpt from such a communication:

I am sure that I am not mistaken in believing that the assembled ministry of Hesse does not wish to participate in a reactionary development . . . and I may urgently request, both under instructions from the national President and . . . in the interest of national unity, that the ordinance be revoked immediately. . . . I hope . . . that the Hessian government, whose understanding and appreciation of the great questions of German unity has constantly been a model, will also in this case allow the immediate question to yield to the larger viewpoint. . . . I should be grateful for a formal telegraphic notification of the . . . decision, and should be especially obliged if this should relieve me of the necessity of requesting from the national President further measures for setting aside the ordinance.<sup>38</sup>

It will be noted that this letter offers an opportunity for an apparently voluntary revocation of the ordinance in question, yet makes it clear that further measures will be taken in case

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<sup>38</sup>From a letter sent on October 7, 1922, by the national Minister of the Interior to the Ministry of State of Hesse, quoted by Dr. Fritz Poetzsch in *Jahrbuch des öffentlichen Rechts der Gegenwart*, Vol 13, 1925, pp. 37, 38.

the state fails to avail itself of this opportunity. These further measures, it is intimated, will not be an appeal to the courts, but an exercise of executive power by the national President. The nature and extent of this power, as applied to the states, must next be considered.

*C. Executive control by the President*

The exercise of federal execution by the national President as against a state is provided for in several constitutional articles. It has already been mentioned that the President is required to execute the decisions of the supreme judicial court.<sup>39</sup> The methods that may be employed in execution are not specified; except that Article 48 provides as follows:

"If a state does not fulfill the duties laid upon it by the nation Constitution or the national laws, the national President can compel it to do so with the aid of the armed forces." There is much disagreement among German publicists<sup>40</sup> as to whether the President could do this on his own judgment, that a state was failing in such duties, or whether he must await the decision of the court. If a question is obviously justiciable and has been brought before the court for decision, probably no president would undertake compulsory measures until the judgment had been rendered, particularly since he would doubtless find it very difficult to obtain the requisite ministerial countersignature. In the case of "passive resistance," however, he would probably proceed if remonstrances and other mild measures proved insufficient. The question cannot be answered from experience, because there has been no case of execution on the ground of Article 48, paragraph 1 alone. Measures taken under this article have been described as being based on the second paragraph (RGBl., 1922, I, p. 187), or simply on Article 48 (*Ibid.*, p. 523). Occasionally the purpose of an ordinance is stated as "the carrying out of the Constitution and the restoration of public safety and order" (RGBl., 1920, p. 477), thus leaving the question undetermined as to whether the measures which it institutes could be taken

<sup>39</sup>Constitution, Article 19.

<sup>40</sup>Wittmayer, Otto, *Die Weimarer Reichsverfassung*, p. 256; Anschütz, *Die Verfassung des deutschen Reichs*, pp. 106ff.

on the first ground alone.

In the very important conflict between Bavaria and the Reich in 1922, concerning the law for the safety of the republic, the national President expressed a personal judgment, but did not proceed to execution. He wrote as follows:

The ordinance passed by Bavaria in consequence of this law, is, in my opinion, and in the opinion of the national Government, contrary to the national Constitution. . . . Out of my guardianship of the national Constitution and of the national idea (*Reichsgedankens*) grows the duty to work, in accordance with Article 48 of the national Constitution, towards the revocation of the Bavarian ordinances. But I would decide upon such a step . . . only if I should come to the conviction that the last measures for an understanding concerning a speedy settlement of this conflict have been exhausted. I beg you therefore . . . in the interest of our German people and country, which are equally dear to both of us, to take into consideration once more, whether it does not appear possible to you to spare yourself and me this undesirable step.<sup>41</sup>

This letter was followed by a series of negotiations ending in a compromise which "may be summed up as a formal and legal victory for the Reich and a political and tactical triumph for Bavaria."<sup>42</sup> The episode left unsettled the question whether the President can proceed on his own judgment (in this as in all his official acts, subject to the ministerial countersignature) to execution on the basis of the first paragraph of Article 48. On the other hand, it shows that methods not specifically provided for in the Constitution may be employed to attain a constitutional object. Negotiations have in fact solved a number of other conflicts between the Reich and various states.

The remaining paragraphs of Article 48 place great powers in the hands of the national President in case of disturbances of public safety and order. They read as follows:

If public order and security are seriously disturbed or endangered within the Reich, the national Presi-

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<sup>41</sup>Quoted in *Bavaria and the Reich* (Johns Hopkins Studies) by Johannes Mattern, p. 70.

<sup>42</sup>*Ibid.*, p. 77.

dent may take all necessary steps for their restoration, intervening, if need be, with the aid of the armed forces. For the said purpose he may suspend for the time being, either wholly or in part, the fundamental rights described in Articles 114, 115, 117, 118, 123, 124, and 153.<sup>42a</sup>

The national President has to inform the Reichstag without delay of any steps taken by virtue of the first and second paragraphs of this article. The measures to be taken are to be withdrawn upon the demand of the Reichstag.

Where delay is dangerous a state government may take provisional measures of the kind described in paragraph 2 for its own territory. Such measures are to be withdrawn upon the demand of the national President or of the Reichstag.

All details will be regulated by a federal statute.

All authorities agree, and practice has developed, that in the exercise of these emergency or "dictatorial" powers the President is free to use his own judgment. To await the decision of a court would permit the spread of danger and disorder; in consequence, the President may act, always with the ministerial countersignature. Not only the circumstances which warrant action, but the measures to be employed, lie within the President's discretion; yet his actions are always subject to revocation by the representatives of the people.

In several instances the President of Germany has exercised this power directly against states; in a number of instances against cities or districts.

The Constitution makes no mention of the methods that shall be employed, other than the use of armed forces and the suspension of fundamental rights. It is generally agreed, however, that these are of the nature of extremity measures, and that milder ones may and should be employed where they appear to be sufficient. Such has been the practice. In the case of the use of the dictatorial power in Saxony, the national Cabinet issued a clear statement regarding the exercise of this right. They maintained that the only limitations upon it were

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<sup>42a</sup>These include freedom of person, inviolability of domicile, secrecy of communication, free speech and free press, freedom of assembly and association, protection of property rights.

found in the national Constitution; that within these constitutional limitations the President is free to issue all decrees which he considers necessary for the maintenance of public safety and order. To this end he can set aside laws, send in the armed forces, to take appropriate and necessary economic and financial measures. No provision of the national Constitution hinders him, in case of necessity, from removing ministers of a state from service and entrusting other persons with the conduct of their business.<sup>43</sup>

The practice for the past seven years has developed several distinct methods by which the President attains his ends. As in the cases arising under the first paragraph of Article 48, negotiations and agreements have been employed repeatedly. However the President has exercised the dictatorial power in numerous instances.

In case of rather slight civil disturbance, he may extend or make more severe general criminal legal provisions, or may extend the power of the ordinary authorities through the setting aside of any or all of the seven fundamental rights named in paragraph 2, Article 48 of the Constitution.

In case the state and local authorities are unable or unwilling to deal with the situation, a national commissioner may be appointed, who is authorized to take steps necessary for the restoration of public safety and order. A good example of this is a presidential decree published in the *Reichsgesetzblatt* of 1921 (p. 253), which appoints a commissioner to restore public safety and order in Saxony. In this case, the President set aside the seven articles of fundamental rights guaranteed in the Constitution, and permitted the Minister of the Interior to appoint a commissioner of the national government who was authorized to take measures necessary for the restoration of safety and order. The commissioner was placed under the control of the Minister of the Interior and had to follow his directions. All civil administrative authorities of the nation, the states, and the communes, in so far as their sphere of operations fell within the district concerned, had to follow the directions of the commissioner concerning their activities. In case the commissioner required military assistance,

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<sup>43</sup>The text of this statement is found in Stier-Somlo, *op. cit.*, I, pp. 616ff.



he was authorized to ask the National Minister of the Interior for aid, but in case of urgent danger, he was authorized to ask the commander of the military district or the nearest local military station for help. For the carrying out of his functions the commissioner was given authority to issue appropriate ordinances. An extraordinary court, or rather a judicial committee, decided cases arising from the limitations upon personal liberties.

All these provisions are fairly typical of the methods generally employed. In case military force is required, the control is ordinarily given over to the National Minister of War, who appoints a military commander for the district. The civil administration under such circumstances is usually conducted by a civil commissioner, who is appointed by the Minister of War in understanding with the Minister of the Interior.<sup>44</sup>

Finally, under the dictatorial power the President may take economic measures of various sorts. While, in the majority of instances, these economic measures have been of general application, yet they may be used equally well in respect to matters which primarily concern states or localities. Thus, a "dictatorial ordinance" of the President on the basis of the second paragraph of Article 48, made the consent of the national Minister of Finance prerequisite to the raising of foreign loans by municipalities and associations of municipalities.<sup>44a</sup>

"The extraordinary administration," to quote Dr. Grau,<sup>45</sup> "enters into every part of public administration. It is directly the sense of Article 48 of the national Constitution, that where the ordinary police power is not strong enough for the maintenance of public safety and order, there enters in its place, with all available means, the extraordinary national power."

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<sup>44</sup>For examples of this form of control see *Reichsgesetzblatt*, 1920, pp. 41, 207, 1477. For the extraordinary court see *RGBl.*, 1920, pp. 479ff.

<sup>44a</sup>*RGBl.*, 1925, I, p. 7. It should be mentioned that much unfavorable criticism has been directed against the use of the "dictatorial" power to secure ends which might more appropriately be reached by ordinary law.

<sup>45</sup>*Die Diktaturgewalt des Reichspräsidenten und der Landesregierungen, usw.*, p. 107.

## VI. SUMMARY AND CONCLUSIONS

From this brief survey of the position of the state in Germany several facts stand out quite clearly:

Governmental power in Germany is concentrated not in the state but in the nation. One of the strongest proofs of this concentration of power is the fact that the nation alone has the power of changing the Constitution, which fixes the relationship between the nation and the states. The importance of such "competence of competence" appears from an examination of the limitations upon the state which already exist in the Constitution. This document determines what form the state governments shall have, how the territory of the nation shall be divided, and what functions shall be taken from the state in whole or in part, and exercised or controlled by the nation. While theoretically the relationship of the German states to the nation is the same as in the United States (that is, the nation has only specified powers, while to the state is reserved all other powers), in fact the nation has been given so much competence in respect to both legislation and direct administration, that the competence remaining to the states is relatively unimportant in most respects, particularly in the field of legislation. The theory of concurrent jurisdiction seems to leave to the states a good deal of power which they may use until the nation wishes to exercise it. As a matter of practice the nation has passed laws upon so many subjects of concurrent jurisdiction that little power remains to the states since the national laws in such cases are supreme. In a great many instances where there has been a judicial conflict between the states and the nation over questions of concurrent jurisdiction, the state laws have been declared null and void as conflicting with the national laws.

While the Reich has not yet made full use of its normative authority, it is evident from the decisions of the courts, that this power can go much further than the mere establishment of norms within which the states must legislate. The nation may, under this power, make provisions which have the force of law and are self executory.

The so-called permissive authority of the Reich, in promoting social welfare and protecting public order and safety

through uniform rules, opens to the national legislature an almost unlimited power. Its right to establish norms for state administration in regard to important functions may also be exercised to establish a considerable degree of control over the states.

In strong contrast with the system in the United States, whereby the nation itself carries out all of its functions without asking for the aid of the states, is the German system, by which the administration of national laws is normally given over to state authorities unless the laws themselves provide otherwise. At present, however, this theoretical relationship has been considerably weakened by the fact that some of the largest functions which are administered or controlled by the nation, such as taxation, posts, telephone, telegraph, railways, canals and other waterways, are carried on without the administrative help of the states. Where the states do act as the administrative agents for the nation they are under the administrative control of the nation.

The highly centralized tax system of Germany will be watched with great interest in the United States, where the relationship between the nation and the state, and the relationship of the states toward one another, in respect to taxation, are so highly unsatisfactory. Certainly Germany's uniform standards of taxation, the attempt to evaluate property equitably throughout the nation, the administration by the nation itself of practically all taxes which from an economic viewpoint are national in scope, and the great care taken to give ample opportunity for the settlement of complaints and the redress of grievances arising in connection with taxation through a hierarchy of administrative authorities and administrative courts, will be generally accepted as steps in the proper direction. The power of the Reich to distribute certain taxes among the states and municipalities might theoretically, at least, be exercised in such a way as to equalize the tax burdens, and also to enable some of the poorer states and communities to carry out their function effectively without too great a tax burden upon local property.

While the great centralization of legislation and administration in Germany presents many of the usual problems inherent in a highly centralized state, several forces tend to lessen some of the more important evils. Possibly the most

noteworthy single factor in this direction is the Reichsrat, which through its assistance in the legislative process, its large appointive power over various advisory councils, its assent to ordinances which greatly affect the economic welfare of the states, and its power of saying whether state and municipal taxes are injurious to the financial interests of the Reich, prevents the nation from neglecting the viewpoint of particular localities and helps to prevent national legislation and administration from disregarding the interests of the states. The personal qualities of the members of this body, their direct knowledge of state and municipal affairs, together with the fact that they are placed in a position where these qualities may be exerted upon both legislation and administration, make them a powerful influence in harmonizing the interests of the states and nation. The fact that the states carry out national functions in an administrative way under the supervision of the nation, also helps to prevent too great a degree of centralization; for it is usually the centralization of administration rather than the centralization of legislation or supervision, which makes for red tape and lack of understanding of local conditions in the central office, and the feeling of foreign control in the locality. A further factor which undoubtedly lessens the feeling of the people against the strong centralization, is the assignment of national officers as far as possible to positions within their own states. Another valuable aid in the same direction, as has been shown, is the use of persons residing in a community to assist in the evaluation of the property there, and in the assessment and adjustment of taxes.

The control which the Reich exercises over the states is far greater than that of the central government in the United States, where, except for a recent development of indirect control in connection with federal aid, judicial declarations as to the validity or invalidity of state laws with reference to the national Constitution and statutes compose the only important type of federal control. To judicial control in Germany are added, first, a considerable degree of control by the national legislature, in the exercise of its comprehensive powers, and second, a very extensive degree of control through administration. Thus, the Cabinet supervises the states in their administration of national laws. Strong indirect con-

trol over state and local administration is furnished by the national tax administration. The power given to the President to bring federal execution against a state which does not fulfill the duties laid upon it by the national Constitution or the national laws makes it possible to prevent the practical nullification of national standards, norms and methods by backward or recalcitrant states and communities.

Of much more importance, however, is the power of the President to act in case of disturbances and danger to public safety and order. As this power has actually developed, the President may not only put down riots and insurrections and prevent invasions, but may also take measures of an economic kind, and may act to alleviate dangers from natural causes, such as floods, famines and plagues. The President's authority in this direction seems to be adequate to any need which may arise. Undoubtedly the use of such power, while dictatorial in nature (except that the countersignature of a minister responsible to the Reichstag is required, and that any measure taken under this power must be revoked upon the demand of the Reichstag), has prevented actual dictatorship in Germany during the very troubled times of the past eight years. There has been no occasion for the self-appointed dictator to arise, since his function is forestalled by the dictatorship of the national President, which, though very extensive, is a constitutional institution with constitutional controls. Disturbances and disorders in many states have been put down, and centrifugal tendencies have been crushed, by the effective exercise of this national power.

There is, however, no basis for the conclusion that the German states are little more than administrative districts. While their legal relationship to the Reich, and their competence as outlined by the Constitution and laws, may seem to warrant such a conclusion, yet the very strong feeling of individual identity and sovereignty which exists in certain of the states, the determined resistance which has been made by them to various measures of the national government, and the frequent compromises to which the latter has been compelled, are evidence of decentralizing tendencies which have prevented the complete transformation of the states into mere subdivisions of the Reich. The Reichsrat is a definite expres-



sion of state individuality; many boards, commissions and the like, as well as numerous administrative arrangements, are especially designed to give the states as such an opportunity to coöperate with the central government rather than to become mere passive subjects. The indirect yet powerful influence exercised by the states upon the nation, which is placed in a position theoretically so much stronger, is one of the most interesting phases of the present German Government.

## PILLAGE ECONOMY

BY MAX SYLVIVS HANDMAN

*The University of Texas*

The full story is yet to be written which is to tell how modern economic progress was bought at the price of the ruthless exploitation of our natural resources and the less fortunate races of man. Man's inhumanity to man is old and wellknown; man's unnatural treatment of nature is yet to be told. This book forms a chapter in that long and tragic story.<sup>1</sup>

In the case of the oil industry, as in the case of timber, wild animal life, and the fertility of the soil, individual initiative (the story-book name of the competitive system) has created new problems—and we do not as yet know how serious—just as fast as it has solved old ones. The competitive system with the business man at the helm has probably made possible the fullest utilization (for its time) of the machine process; at the same time it has made possible the modern standard of living and the modern growth of population. But this does not mean that the new technique would have been left in a state of innocuous desuetude without the business man to finance it and manipulate it. What it does mean is that it would have taken longer for it to swing into its modern pace. This would have called for a more cautious utilization of our natural resources, a slower advance of the frontiers of industrial civilization, a more stable and more even growth of this same civilization with a more balanced development of its various parts making predictability and control easier and the content of life fuller and more varied. At the same time it would have made difficult such a rapid rise of the now prevalent pecuniary standard of living and the ubiquitous consumption of useless products; it would have left life simpler in the unessentials and would not have burdened our nervous systems with the compulsory compliance to a host of labor-saving devices which, if they have not increased human labor, have at least borne out Mill's famous dictum.

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<sup>1</sup>*The Oil Industry and the Competitive System: A Study in Waste*, by George Ward Stocking. Houghton, Mifflin Co., Boston, 1925, pp. x, 323.

"Hitherto it is questionable if all the mechanical inventions yet made have lightened the day's toil of any human being." For whether one works at something unpleasant and uncongenial because driven by a task-master or because driven by what "the Jones's will say" if we don't buy a new automobile when the old one is good enough and none is even better—all this is a distinction without a difference.

But the tragedy of the situation lies not so much in what has happened as in what is bound to happen after the ruthless exploitation of our natural resources has created our modern industrial civilization and our modern standard of living. We now stand committed to both, and both of them depend upon a luxuriant and over-generous flow of the natural resources which have made them possible. Life when conceived and nourished in terms of automotive transportation, cannot continue with a shortage of gasoline and lubricants. Even the machine process devoid of the automobile is inconceivable with whale oil, tallow and suet as the dependable lubricants. Gradually steam also is being generated by fuel oils—the locomotive and the trans-Atlantic liner, the man-of-war, and the factory boiler, even the furnace in the private home, are depending more and more upon the utilization of petroleum in its various forms. "From 1909 to 1921," says Professor Stocking, "fuel oil consumption by locomotives increased from 19,900,000 barrels to 33,900,000 barrels. In 1918 more than 35,000 miles of line were operated chiefly by fuel oil. . . . And the same thing is true of the great shipping fleets of the world" (pp. 252-253). A huge and expensive system of economic production is growing up with petroleum and its products at the center. And yet, in spite of the perfectly obvious fact that petroleum is a wasting asset, the competitive manner of control over oil makes it impossible to meet whatever glimmering of the seriousness of the situation some of the persons in control of it might have.

Professor Stocking has treated the subject in a manner so comprehensive and so convincing as to leave nothing for the critics to say. But some of the critics have said that since his data do not go beyond 1924, he has failed to take cognizance of the repentance of the oil industry and its efforts at stopping the reckless waste. Even if that were true

—and it seems to be true only to a very small extent—they who speak in that manner have entirely missed the point of this study. This is not simply a study of oil, much less an indictment of the oil producers and exploiters. It is an economic study of what is happening and what was *bound to happen* to any natural resource which is exploited under conditions dictated by the competitive struggle for money and not by the demands of society for raw materials, and of the limitations imposed upon exploitation by the physical nature and geographical and geological characteristics of the natural resources so exploited. It is sheer nonsense to divide oil producers into good little oil producers and bad little oil producers on the basis of whether or not they encourage or discourage waste. Oil production is engaged in for purposes of making money; and, if money can be made more quickly by wasting a large part of this natural resource, that much the worse for the natural resource—and for us. If it is profitable to save it, it will be saved. And this is what Professor Stocking is hammering on: waste *because* of competition. An oil producer who goes into the business with the intention of saving oil, gas or gasoline when all his competitors are racing madly to get all the oil in the pool, is fit for the insane asylum or the poorhouse.

The casual reader who has been fed on the monopolistic horrors of the great Standard Oil octopus is apt to wonder at the stress laid upon the evils of competition. The contemporaries of the era of the "malefactors of great wealth" who were trained to look upon paradise as peopled by small producers and operators with limited capital, each living under the shadow of his own pump and derrick—all of these Jacksonian Democrats will wonder as to what has happened to the great octopus. Professor Stocking makes this clear in the very beginning of the study. The great octopus has discovered what every exploiter soon discovers—that the chestnuts taste better when pulled out of the fire by other people. Oil is a very temperamental natural resource. It is hard to tell where it is, and the percentage of failures in this gambler's game is very great. So why should an intelligent octopus waste the labor of his tentacles on this gambler's chance? Let others find the oil and he will buy it from them. Under

these conditions it is best that oil drillers work separately and by themselves; let each one follow the rainbow in his own way so that the losses cannot be balanced by the gains and so raise the price. Those who have found nothing to sell will simply have to pocket their loss. Those who "struck it rich" will come to terms with the octopus since the octopus is practically in control of pipe lines and the other forms of oil transportation and distribution. And so monopoly and individual initiative are found lying down peacefully side by side in the oil industry—a picture pleasing to the eyes of the Jacksonian Democrat.

There are two central points in Dr. Stocking's analysis of the oil industry. The first is that oil is here for the purpose of being used by man for his needs. Simple as this contention might seem, it is still a contention which has not found its way into the thinking of the average politician, business man or even economist. Their contention is that oil is here for the purpose of making money. The second central point is that the oil appears under certain definite geologic conditions, the oil pool. Any sensible society interested in using its natural resources would start with that simple natural fact, and would try to adapt its economic power of exploitation to the technique dictated by the geologic structure. These two central points run together and form one assumption on which any other but a business system would be based. But not so with oil under a business competitive system. The first requisite here is to make money and make it before the other fellow can take it away from you. The result is that from 80 to 90 per cent of the oil remains underground (p. 143), and the result also is that if we could add up the amounts spent in drilling wildcat wells and subtract that from the amount yielded by the oil obtained, the figures would be far from startling or even (monetarily) satisfying. Here is an instance in the Ranger field, familiar enough to Texans. A well drilled on a particular property cost \$40,000 to drill and it brought the company \$792,000 profit. After the first well seventeen more wells were drilled, costing the company \$680,000 to drill and bringing in a total loss of \$548,750. The net gain of the whole enterprise was \$243,250 which is something like 33 per cent gross profit on the investment. To the business man this might seem good enough. To Dr. Stocking



this is criminal, not because he regrets the loss of so much profit to a private oil company, but because it meant throwing away human labor and humanly needed materials amounting to \$548,750 just because a competitive system of oil production makes it necessary for every driller to rush wildly into the drilling game for fear that someone else will get ahead of him. But information as to the losses involved in wildcatting is not available, and hence the myth of the oil industry as a means of getting rich quick prevails with the dismal consequence of encouraging all sorts of people to invest their money recklessly. The average investor does not know, and the average oil operator will not tell him that drilling many wells will result in less oil, provided the drilling is synchronized: only when many wells—up to a certain point—are drilled at the same time, can one get the maximum amount of oil from the pool. But the ears of the wildcat investor are stuffed with tales of huge royalties and swollen dividends and caution falls dead.

The extent to which the property line is the great enemy of economical oil recovery can be seen from another instance quoted by Dr. Stocking:

Messrs. H. N. Bell and J. B. Kerr in presenting the results of the Bureau of Mines' study of the development programme as executed in these pools state: "The two pools could have been developed economically with 830 wells, which would have been spaced close enough to drain in a satisfactory manner the 4,175 acres of land. These wells at \$21,000 each would have cost \$17,430,000 as compared to \$43,407,000 for those actually drilled" (p. 158).

By the simple device of drawing a legal line on the ground, the oil recovered cost \$35,000,000 more than it would have without that simple device—cost, again, in terms of human labor and human goods and tools.

The second largest item of waste next to oil is that of natural gas. Here also it is not a question of greedy-handed and wild-eyed exploiters going about willfully destroying the patrimony of the republic. It is simply a question of a business system at odds with the natural conditions under which oil and gas are found. When the oil or gas stratum is punctured the gas begins to flow. After flowing or exploding for some time it begins to drag the oil with it. Now if an oil driller is con-

siderate enough of the value of gas to the community and refuses to let the well run wild and waits until the necessary preparations for storing the gas are made, a less scrupulous competitor working under the approval of the law, the church, the Rotary Club and the Chamber of Commerce will puncture the pool on the other side of the property line, let the gas escape, get the oil, buy himself a Cadillac, and leave the considerate oil driller to suck his moral thumbs, with possibly a supreme moral satisfaction but no oil and a well which cost from thirty to sixty thousand dollars to drill! But the extent of the damage to the community can only be guessed at by some of the figures given by Dr. Stocking on pages 177-179.

Beginning in June, 1919, and extending throughout that year, a number of tests were made at successive intervals in the Eastland County, Texas, fields under the supervision of the Oil and Gas Division of the Railroad Commission of Texas, assisted by a representative of the Lone Star Gas Company. The purpose of these tests was to ascertain, on the one hand, the amount of gas then wasting, with an idea of determining the practicability of initiating a conservation campaign under the authority vested in the Railroad Commission through legislative enactment. On the other hand, it was hoped to locate a source of gas supply for domestic consumption to relieve the acute shortage then existing in certain Texas cities.

The investigation covered more than sixty-seven wells, with a combined daily production of nearly 1,000,000,000 cubic feet, all of which had at one time "run wild." The daily waste per well ranged from about 1,000,000 to 100,000,000 cubic feet, and the time that wells were uncontrolled varied from a few weeks to over six months. On twenty leases there was, at one time, a daily waste of 238,000,000 cubic feet of gas, the equivalent of over 9,934 tons of coal, and having at the prevailing consumer's price a commercial value of \$107,100 daily and at field prices a value of nearly \$12,000 daily.

One well tested in June showed a daily waste of 70,000,000 cubic feet and the same well in November tested 100,000,000 cubic feet. This well "ran wild" for approximately six months and was one of the biggest gas wells ever discovered in the United States. During this period the gas escaped from the well with such great velocity that the roar could

be heard for miles. The well was later connected with the pipe line of a distributing company and marketed in the field for drilling purposes. But during the time it was uncontrolled it wasted daily the fuel equivalent of over 3,300 tons of coal, the daily waste of gas having a value of over \$36,000 at consumer's prices and over \$4,000 at field prices. During five and one-half months it wasted approximately 13,200,000,000 cubic feet of gas, the fuel equivalent of approximately 550,000 tons of coal. It would have supplied over 132,000 families with fuel for a year at a cost of over \$5,940,000, and at field prices the gas would have brought \$660,000.

Tremendous as these wastes may seem they have not been unusual, nor are they peculiar to any one locality. Rather, they have been ubiquitous and persistent characteristics of oil field practices. In the absence of governmental restriction they are customarily regarded as necessary and unavoidable, a part of the system under which they manifest themselves. Van H. Manning, until recently director of the Bureau of Mines, sums up the subject in the year book of that institution for 1916. He points out that in the Cushing, Oklahoma, field . . . during the year 1913 there was an average daily waste of not less than 300,000,000 cubic feet, or more than 100,000,000,000 cubic feet in the course of a year, the equivalent of about 5,500,000 tons of coal. This amount of gas would have been about sufficient to have supplied the entire City of New York with fuel for domestic purposes during the period it was wasting, had it been available in this locality. Mr. Manning says:

"Not only was the gas allowed to waste, but such tremendous volumes of this inflammable material hung over the oil fields that automobiles were not allowed to enter, and in many cases disastrous fires were started, resulting in the loss of life and property.

"All this gas was wasted in order to produce about 30,000 barrels of oil daily; in other words, at the prevailing price paid by domestic consumers for such fuel, gas worth about \$75,000 a day was needlessly wasted to obtain a daily oil production at less than \$25,000."

Mr. R. S. Beatchley, summing up the waste in the Mid-Continent field estimated that the waste of gas prior to 1913 was 425,000,000,000 cubic feet. This wasted gas at the rate

the product was then consumed in Oklahoma would have been sufficient, if wisely exploited, to have served the state for over sixty years. "The intrinsic value of this lost gas, if it had been saved, would doubtless exceed the value of the oil that has been produced from these fields."

Thrice-blessed individual initiative and the competitive system!

The litany of waste goes on from one thing to another. After waste in production and waste of gas there comes waste by flooding of oil sands. Eager to get as much oil as possible, the driller punctures the wall which separates the oil pool from an adjoining water pool and the oil pool is ruined. Salt water becomes mixed with the oil and the well is usually abandoned.

A well was completed on the Peoples farm in Eastland County, Texas, in September, 1919. The well extended the Pleasant Grove Pool about a half mile to the southeast. The top of the oil sand was encountered at a depth of 3,563 feet and the first twenty-four hours' production yielded 1,200 barrels of oil. *Although other wells had been completed within one-half mile, information in regard to underground conditions were not available.* Therefore, the well was drilled through an oil sand, nineteen feet in thickness, through a thin hard shell and into bottom water. Its production dropped overnight to 329 barrels of oil accompanied by considerable water. From that date until the spring of 1920, the well continued to produce water, the amount of oil steadily decreasing. On March 28 its production of oil was only sixty barrels (p. 194).

The cause of all this waste is found in the sentence italicized by the writer in the above quotation. Competition means war. War means that you cannot afford to let your competitor know anything of your business. Some improvement along that line has been made since this book has been written, but for years the competing drilling companies have kept spies in the field in order to find out something of the experiences of each other and to avoid the misfortune of unwise drilling. One can imagine the meagreness of the information obtained in such a way when the crying need was for the most complete, most thorough-going knowledge of all the idiosyncracies

of the pool worked on. A further insight on the wastefulness of wild-catting as over against intelligent planning and adequate information is found on page 138. "The president of one of the large Mid-Continent producing companies, however, is said to have calculated from extensive records of his company that 85 per cent of the wells located on the basis of careful geological surveys proved to be productive, whereas only 5 per cent of the wells located at random were successful."

And finally—finally for the purposes of this review—there is to record the waste of the gasoline which was carried away with the wasting gas. From one well in the Desdemona field in Texas it was estimated that one day's flow wasted 48,000 gallons of gasoline, and during four months it wasted 5,760,000 gallons of gasoline. The value of the oil recovered amounted to \$225,865 and that of the gasoline wasted amounted to \$1,440,000!

The competitive oil industry caught red-handed in this orgy of waste has cried *pecavi*, I have sinned, but I have reformed now. Critics of this study have tried to make it appear that since it has been completed, in fact since Dr. Stocking has left the oil fields, the amount of waste has been so rapidly and so greatly reduced as to become a minimum. On the heels of these apologies for the existing system and as an answer, as it were, to this *ex parte* defense, there comes the President's appointment of the Federal Oil Conservation Board which reported back to him in September, 1926. This report sounds like an echo of Dr. Stocking's book. "The evidence before this Board," says the report on page 10, "shows the general belief of oil experts that not more than 25 per cent of the oil can be recovered by ordinary methods. Some leading authorities consider that less than one-sixth of the oil is so recovered." Dr. Stocking says that from 80 to 90 per cent of the oil remains underground. Apparently oil operators have felt that they could talk more frankly to the Conservation Board and so "operators of experience have expressed to the Board the opinion that duplication in drilling and the consequent unnecessary reduction of gas pressure constitute the cause of all waste worth mentioning in the production of oil" (p. 15). Page after page in this short report is taken up with a defense of "the limitation of individual



action so as to promote the common interest" (p. 20). In another place the representatives of a political party which is known for its advocacy of free competition say this (p. 17): "Freedom from the pressure of competition has made possible at Cabin Creek a remarkable controlled production curve for the field, bearing little resemblance to the decline curves of other fields." And if one wishes strong language one might read (p. 18) about the "economic demoralization that has followed the discovery of each of the larger flush pools."

The waste of gas is concisely summed up by the commission in this paragraph.

"Gas is more than a commodity of smaller commercial value associated with oil; it is the efficient agent provided by nature for bringing the oil within the reach of man . . . the longer the gas is retained in solution the larger is the recovery of oil. Waste of gas is therefore a double waste, and the impairment of the gas pressure in an oil sand by one owner may prevent his neighbors from recovering any of the oil beneath their land and himself from securing more than a small part of the oil underlying his own land" (p. 14). And further: "The results of research now in progress point unmistakably to the urgent need of concerted action in development and operation of an oil pool" (p. 19). And in the startling remedy suggested by these high priests of competition is "The right of the state under its police powers to prevent the action of one owner from working a deprivation of the rights of other owners of a common property, and to prevent waste or destruction of the common property by one of the owners, seems reasonably clear. The right of the state to prevent the waste of natural resources is rendered more important in this matter by the newly discovered . . . facts regarding the rôle of gas in the oil sands" (p. 14). If the oil industry has had its feelings hurt by what Dr. Stocking said about it, what will it do about this naughty oil Conservation Board, which even threatens to call in a policeman on it. Does it not seem that the Board is making a lot of fuss in an industry which has managed to abolish waste?

The facts in the case are undoubtedly as Dr. Stocking has stated them. And he has stated them with caution, with

candor and with the greatest desire to be fair to the industry and the individuals in it. The villain in the tragedy is the competitive system for which neither the industry nor the oil producers are sponsible. The Hart, Schaffner and Marx Prize Essay Committee has honored itself as well as Dr. Stocking by awarding to this study the first prize of \$1,000. The greatest recognition, however, would come to him if the persons responsible for our natural resources would heed his warning and put the house in order.

It has happened before in the history of our timber resources that we have gone on in this devil-may-care way using and abusing with a supreme contempt and a foolish hope that somehow "the Lord will provide." Today we are a people using timber for paper alone amounting to 8,800,000 tons annually. With the darkening shadows of shortage upon us, a recent writer sadly wails: "Had the Lake States and the New England States arranged thirty to forty years ago to perpetuate their supply of pulp wood by reforestation and protective measures to prevent and fight fires, today there would be a young growing forest in the East and the Middle West, sufficient to supply those mills soon to be starving for supplies and going out of business." In the years to come—and not many years—the oil industry will wail in the same manner, but by that time the interest in the oil industry will probably be of a purely antiquarian character.

## BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

*University of Texas*

Mencken, H. L. *Notes on Democracy*. (New York: Alfred A. Knopf, 1926, pp. V, 212.)

It is not infrequently asserted and presumably it is believed fairly commonly that Mr. H. L. Mencken exerts more influence on educated Americans than does any other single individual. Concerning this influence, however, one may be definitely convinced that it ought not to be, and one may even reasonably doubt whether it really exists. It would seem necessary to stress the matter of Mr. Mencken's influence, since there appears no other standpoint from which to attempt an appraisal of his *Notes on Democracy*. His less confused views on democracy, when stripped of their embellishment, are doubtless sound, certainly not original, possibly axiomatic. No serious denial can be made of the importance of his continued effort to dethrone democracy as a religion by rational means, even if he does not make it clear whether he wishes it to be considered a form of government, a form of state, or a form of social organization. Again, full sympathy may be accorded to the contention that "defects must be got rid of by examining them realistically . . ." The real question, it may be repeated, is one of influence. In other words, the principal consideration is whether Mr. Mencken really furthers the cause in the service of which he enlists. In this respect, the suggested distinction between the desirability of his influence and its actual existence may be maintained.

Mr. Mencken, in what appears to be his most dispassionate statement of the case, would have it that democracy rests on two universally accepted axioms: The one is that the people possess an inalienable right to govern themselves; the other affirms that they are competent to do so. It is doubtless characteristic that Mr. Mencken neglects the first of these axioms in order to pay his complete respects to the second. The first would have furnished him with an opportunity which he must have found difficult to resist. He might in his own peculiar way have refuted a view which thinkers discarded sometime since. However, he has preferred not to depart from his favorite theme of *intellectual aristocrats versus the "boobs"*; and so he confines himself to an attack on the competence of people to govern themselves. Four-fifths of the people, runs his account, are "boobs." They are responsible only to the emotions, of which the principal is fear. They feel nothing but envy towards the one-fifth who possess the good things of life. Therefore, the four-fifths, being more completely sovereign than any despot who ever lived, bring upon themselves and the superior one-fifth nothing but bad things, the greatest of which is Puritanism. Thus does Mr. Mencken work himself into a fury. The object of attack is no

longer the assumption that the people are competent, or may become competent, to govern themselves. The doctrine takes the form of the view that "all moral excellence, and with it all pure and unfettered sagacity" reside in the inferior four-fifths. The facts, Mr. Mencken contends, are flatly against this view. With the facts, however, he takes as much liberty as with the doctrine. There may be granted to him without question the fundamental inequality of individuals. Any averagely intelligent person knows this without assistance from differential biologists and psychologists. Aside from this, on the other hand, it is safe to assert that a good nine-tenths of the alleged facts adduced by Mr. Mencken are false, inaccurate, or, at the least, misleading. Moreover, this is not all. It would perhaps be too much to expect any evidence of knowledge of the elementary principles of the science of government. It would certainly be unreasonable to look for any signs of respect for the ordinary canons of formal logic. At the same time, there is good reason for finding fault with such things as misquotation and disregard of English and foreign syntax. The reason is that people should not throw especially large stones with inordinately excessive vigor, if people themselves reside in houses of extremely brittle glass. Mr. Mencken, in his bill of indictment against the "boobs" composing the inferior four-fifths of the American people, specifies angrily and contemptuously their ignorance of various sciences with long and short names, their lack of acquaintance with all the fine arts, their failure even to have heard of the great names of the world's literature, philosophy, science, and art, and their ludicrously mistaken notions concerning other matters. In employing his own standards to distinguish between himself and the nether portion of the population, he ought to have made sure of the security of his own position. That he has done so appears very doubtful. Examples almost without number might be cited, but one will perhaps serve as an illustration. Mr. Mencken has found it necessary to coin a word. To this there is of course no objection. He has felt it important to find a term which will serve as the complement of demagogue. So, in characteristic fashion, he speaks of "the art of what may be called, by a shotgun marriage of Latin and Greek, the demaslave." Since he has gone out of his way to drag in his learning, there seems to be no escape from the conclusion that he knows *slave* to be Latin in origin and the alpha in *demagogue* to belong to the first half of the compound! Of the "boob," Mr. Mencken says: "Greek, to him, is only a jargon spoken by boot-blacks . . ." Possibly this limitation of the "boob's" acquaintance with the use of the language has, by comparison, a good deal to be said for it. The argument becomes very simple. In our democracy, according to Mr. Mencken, greatest influence is with the wrong people. Those with whom influence ought not to be may be detected by their ignorance of certain things, among them the Greek language and the science of philology. Even to Mr. Mencken, weak as he is in valid ratiocination, the conclusion must appear inescapable.

Only a word need be added concerning the question whether Mr. Mencken is in actuality very influential, when, judged by his own standards, it is so doubtful whether he ought to be. If the matter is envisaged in wide perspective, the opinion may be ventured that he is not. Considered over a period of time sufficient for the law of action and reaction to do its work, excessive vituperation and scurrility cannot be expected to perform service of permanent value, even in a good cause. Democracy will never be improved by the simple expedient of being told, however vigorously, that democratic man is a swine, imbecile, louse, and the rest of Mr. Mencken's pet names.

Formal democracy has in the past had as its chief task the conquering of political power. Unfortunately, sufficient time and energy were not left for ideas and for the culture of the individual. It was not necessary to await the advent of democracy to learn that political power may be abused as well as properly used. The determining factor is the character of those who possess power. At the present time, attention is undoubtedly being shifted in this direction. Reasons are not lacking for the belief that democracy offers the best conditions in which to hope for improvement. There are critical advocates of democracy, possibly not to be regarded as complete boobs, who do not agree with Mr. Mencken that hope is absurd.

R. K. GOOCH.

University of Virginia.

Vasconcelos, José, and Gamio Manuel. *Aspects of Mexican Civilization*.

(Chicago: The University of Chicago Press, 1926, pp. ix, 194.)

Saenz, Moises, and Priestley, Herbert I. *Some Mexican Problems*.

(Chicago: The University of Chicago Press, 1926, pp. ix, 175.)

In furtherance of the purpose of "The Norman Wait Harris Memorial Foundation" to promote a better understanding on the part of American citizens of the other peoples of the world, thus establishing a basis for improved international relations and a more enlightened world-order, the Third Institute held at the University of Chicago in the summer of 1926 was devoted to the problems of Mexico. The lectures delivered before the Institute have been published in two volumes: the first entitled *Aspects of Mexican Civilization* (which for the purpose of convenience in this review will be cited as Volume I), contains the lectures of José Vasconcelos, former Secretary of Education of Mexico, and Manuel Gamio, former Director of the Bureau of Anthropology and Sub-Secretary of the Department of Education of Mexico; the second, entitled *Some Mexican Problems* (to be cited as Volume II), contains the lectures of Moises Saenz, Sub-Secretary of the Department of Education of Mexico, and Professor Herbert I. Priestley, of the History Department of the University of California.

The subjects discussed in Volume I, "The Latin-American Basis of Mexican Civilization" by José Vasconcelos, and "The Indian Basis of Mexican Civilization" by Manuel Gamio, are designed as basic in-



formation indispensable to an understanding and appreciation of present-day Mexico and its problems. The broadest possible background is first presented by Señor Vasconcelos. He emphasizes that the case of Mexico is not an isolated fact; "the case of Mexico is a portion of a larger continental situation. It is exactly the same as the case of Bolivia and Peru, of Chile and Venezuela and Central America." He discusses Latin-American civilization as the creation of marked physiographic influences. In the existence of recognized handicaps of geography and climate the reason for many of the traits of Latin-Americans, both the bad and the good, are to be sought. "The United States has developed in accordance with the law of similarity of races and efforts; Latin-America is struggling along according to a sort of varying rhythm of radical changes and contrasts." The differences in the development of Anglo-North American and Latin-American civilizations should be kept in mind by every impartial observer and critic; an appreciation of the problems of our neighbors is not possible otherwise.

"All the political problems of Latin-America," says Señor Vasconcelos, "and very particularly the political problems of Mexico, can be summed up in these two words: 'democracy' or 'dictatorship.'" Perhaps the most characteristic feature of the political history of Latin-America since independence has been the cycle of revolution and dictatorship, the struggle between democratic and dictatorial methods of government. Dictatorship to the uninformed, and to self-seeking foreigners, is supposed to achieve success in the more backward Latin-American countries. But, according to Vasconcelos, one-man rule, no matter how strong, has no place in Latin-America. He says, "The irrepressible self-asserting revolutionary spirit of the Latin-American nations is enough to show that we shall have no enduring peace on this continent so long as there are one-man governments and dictatorships in our nations." What is the way to correct the vice of dictatorial government? The question is answered by pointing to the example of Sarmiento in extirpating *caudillism* from the soil of the Argentine. The remedies are two: public education, and political propaganda in favor of civilized forms of government. These remedies are being administered in large doses in Mexico today; especially the former; the most important message that the distinguished Mexican lecturers brought to the Harris Institute was a recital of remarkable educational improvement. Convincing data relative to the Federal educational program was presented by Señor Saenz. He also discussed the process of integration through education—principally the rural school in the Indian districts.

The racial problem also occupied a large place on the program of the Institute. Señor Vasconcelos devoted one lecture to the mestizo as the dominant element in Mexico, and Señor Gamio gave two lectures on the subject of "The Indian Basis of Mexican Civilization." The Mexican problem is largely a racial problem; the status of the half-breed and the Indian is the all-important issue of the Revolution. It is entirely fitting therefore that the racial question should have been given due

attention in these lectures. It does not appear, however, that it was sufficiently emphasized that the Mexican Revolution is not only political, economic, and social, but also nationalistic. How else could one explain completely the anti-foreign provisions of the Constitution of 1917? The anti-religious measures also can be explained partially in terms of the new nationalism. (Incidentally it should be noted that the careful avoidance of more than casual reference to the religious question is noticeable in all of the lectures.)

There is a great concerted movement on foot in Mexico to stimulate and crystallize a new spirit of Mexican nationalism. Señor Saenz in his lecture "Integration Through Education" explains the rôle of the schools in this great work. In the stimulation of Mexican nationalism the reviewer sees a grave danger that a proper balance will not be established between the elements of Spanish and native culture. The tendency of the radicals is to exalt the native and disparage the Spanish. Men like Gutierrez de Lara claim that all good Mexican traits are Indian, and all bad traits are Spanish. Señor Gamio is not so narrow-minded, but his exaggeration of the attainments of ancient native culture convince the reviewer that he has subscribed to the "native culture as basis of Mexican nationalism" fetish. He pictures native society before the coming of the Spaniards as a sort of Utopia, and with the Spanish conquest came economic and moral ruin. The Spanish conquest meant economic ruin only to a relatively few native overlords, military and religious; as far as the great mass of the people was concerned, there was merely a transfer of control; the servile yoke was found on the necks of the people and was kept there. In his discussion of the native religion and its influence on native art, which is described as "expressive, individualistic, and dramatic," Señor Gamio claims that the introduction of "the pagan Catholic" faith stifled native artistic expression. The images of saints and divine beings no longer provoked the powerful response of human life to nature; "symbolism died with its brilliant and picturesque mythology." A very pretty picture if we are careful to avoid as does Señor Gamio all reference to the bloody rites of Huitzilopochtli. A denial of positive advantages of Spanish civilization, and the exaltation of either spurious or very doubtful native contributions cannot make for the development of a great Mexican race such as Señor Vasconcelos envisages in the mestizo.

Señor Saenz gives an authoritative interpretation of the situation created in Mexico by foreign investments, particularly American. After explaining how completely Mexico was delivered over to the foreigners, especially during the Diaz régime, he says, "Our nationalistic policy is simply trying to correct a misplaced emphasis. We are satisfied no longer with Mexico being the mother of the foreigner and stepmother of the native. Our nationalistic policy pretends to meet the foreigner and to be met by the foreigner on a basis of equal terms." A careful examination of the so-called anti-foreign legislation in Mexico must convince any fair-minded person that Mexico, notwithstanding her ex-

treme provocation, is very fair to the foreigner—more generous in fact than other more advanced and powerful nations.

The greatest political influence in Mexico today is organized labor. In his lecture on the Mexican laborer Señor Saenz tells about the organization of the proletariat in Mexico which he characterizes as one of the most spectacular movements in the history of labor. In the discussion of this subject he is at pains to refute charges that Mexican labor is bolshevik. "The concept of power vested in a central government is too ingrained into our national consciousness to allow bolshevik rule." Although he admits that there are regrettable features in the labor program, particularly the powerful political influence exerted over the government, yet he is very charitable in his criticism of the movement. The reviewer feels that Señor Saenz discussed this subject under restraint; certainly he withholds an exhaustive and frank discussion. The reason is that the labor movement in Mexico has all the ear-marks of radical socialism or mild bolshevism. The peculiarities of the situation that demand such a program, which make it in fact Mexico's only course, should be explained, and the details of the course frankly stated. There should be no hiding of the facts but merely an explanation of the situation. Finally, any fair-minded person should agree with Saenz' conclusion that, "Organized labor should be welcome in Mexico, if for no other reason than for the reason that it is organized and that it represents a disciplinary factor in Mexican life."

The lectures delivered by Professor Priestley are devoted first, to fundamental reasons for a general reconstruction of Mexican society, and second, an examination of the working policies and the constructive acts of the Mexican people and government. The tone of these discourses is liberal and sympathetic on the one hand, and yet on the other hand it is conservative and critical. Professor Priestley is undoubtedly one of the most able scholars of Mexican history in the United States; he is therefore qualified, as is no other non-Mexican, to reinforce his study of contemporary Mexico with a rich fund of historical information. It was a wise arrangement which placed Professor Priestley last on the program for there was need of a competent and impartial critic to sum up the problems confronting Mexico as presented, not without bias, by the distinguished Mexican lecturers.

The purpose of the Harris Foundation was well served by the Third Institute. The lectures as originally delivered, and their subsequent publication, should promote a better understanding on the part of American citizens of the problems of our Mexican neighbors. It is to be earnestly desired that many more such conferences will be held in the near future. The instruction of the American people in the true nature of the Mexican problem will be the surest guarantee of improved relations with Mexico.

J. LLOYD MECHAM.

University of Texas.

Moon, Parker T. *Imperialism and World Politics*. (New York: Macmillan, 1926, pp. xv, 583.)

This book is bold and comprehensive in plan, well organized and admirably executed. The author has displayed masterly ability in the presentment of his material, in the analysis of the great movements embraced within the period, and in his impartial judgments of men and nations. He frankly warns the reader in the Preface (IX) that his conclusion will not be an indictment, but simply an evaluation of the achievements and problems of imperialism. That evaluation is quite sensible and consistent; the solution of the problems rests in an enlightened public opinion which is the foundation of international coöperation.

The first chapter, devoted to "The Significance of Imperialism," is deliberately written to grip the reader's attention with the employment of rhetorical embellishments and startling statements, all of which, however, are well supported in the subsequent chapters that develop the historical background. In this chapter he indicts all of the great powers and several smaller nations as imperialists, not even exempting our own United States, and indicates that the rivalry has been intensified since the close of the World War.

"The Dynamics of Imperialism," chapter four, is an analytical expression of his purpose announced in the Preface, to study the forces behind diplomacy—the part that social, economic, psychological, and religious factors have had in this particular phase of world politics. The business interests are represented by the manufacturers, the importers, shipping magnates, munition makers, and bankers. Allied with these are military and naval officers, diplomatists and colonial officials, missionaries, explorers and adventurers, and finally the plain politicians. Behind all these, and supporting them, are certain ideas and sentiments: self-defense, fear of attack, or of defeat, or of conquest; the idea of surplus population or self preservation; economic nationalism; aggressive altruism, and patriotism or jealousy for the nation's honor. The author's statement that the initiative in empire-building is taken by "the interests," but support is given by ideas (page 74), seems quite in keeping with the facts.

After laying this foundation in the ideas and interests that dominate economic imperialism, the author devotes the next fourteen chapters to a graphic survey of significant events which prove convincingly that from the 1870's "imperialism was the reality, diplomacy its superficial expression"; that it is useless to indict any one nation and vindicate any other in the World War, for practically all were victims in the "fell clutch of circumstance"; and that even Gladstone, Bismarck, and Wilson were unwilling instruments of imperialistic politics. This part of the book covers familiar material. Access to *Die Grosse Politik* has enabled Professor Moon to speak authoritatively on both sides of many imperialist controversies, either vindicating, or clarifying, or modifying some previous conceptions. It is easy enough to become controversial

even over this material, however impartially presented. The author has performed a commendable piece of work in these chapters and the general reader, as well as the student of world politics, will peruse this part of the book with profit. Incidentally, it will be discovered that the Open Door policy of the United States smacks of other motives than altruism and devotion to the welfare of the Orient and that the Monroe Doctrine has become a weapon to promote American imperialism in the Western Hemisphere. Special attention should be given to the author's detailed analysis of President McKinley's attitude on the annexation of the Philippine Islands (pp. 394-395). The comment, "Mr. McKinley communed not only with his conscience, but also with his advisers. Divine light and guidance had to be confirmed by detailed reports on the economic and strategic value of the islands," though somewhat devastating to our comfortable notion that our retention of the islands was for humanitarian purposes, does not seem to be too harsh.

In the concluding chapter is a dispassionate appraisal of the achievements of imperialism, and by way of summary, some interesting information is presented. On the whole, imperialism has been a dismal failure; yet that does not dispose of the necessity for it. The arguments for a market for surplus goods, or for surplus capital, or an outlet for surplus population have not been confirmed by the establishment of imperialist politics. Foreign investments become a boomerang to the capitalist, for the backward countries become developed and the savings there compete against his own investments; surplus population does not seek settlement among backward people, for modern man prefers to cling to his conveniences rather than risk a precarious existence among savages. The strongest case for imperialism is a market for surplus goods, but even here the economic law of supply and demand is stronger than any political jugglery that imperialist legislature can devise to retain pre-emption for the exporter. England does not command the major portion of Canada's foreign trade, for this goes to the United States. Again, imperialism is not retaining the support of home labor, for the workman in the home factory is discovering that the capitalist is producing goods abroad with cheap labor, and the product competes with that of the domestic laborer, causing unemployment and misery at home. Finally, the exploitation of the native and his property has not been of positive benefit to him. Disease, rum, and weapons of civilized warfare brought by the European have decimated the ranks of the native. One solitary ray of hope is found in the work of the missionary, especially in his efforts to civilize the native through education, sanitation, and Christianity; but even here his effort is largely offset by traders, adventurers, and soldiers who have brought violence, fraud, rum, and disease. The Mandate System seems to promise some relief in preserving the health of the natives and protecting their political and economic rights; a beginning is already made in positive supervision of the mandatories; but palpably such administration is



opposed to imperialism, and is undeniable proof that the old system is recognized as a failure.

The book has so many merits that one can scarcely suggest any shortcoming whatever. One feature, however, the author refrained from developing, and that is the place of missions in modern imperialism. References were made to the activities of some of the missionaries in the furtherance of British imperialism, but the author confesses in his conclusion that the task is too great to attempt to evaluate their achievements. This suggests a problem which might well consume the energy and attention of some student in world politics.

H. H. GUICE.

Southern Methodist University.

White, Leonard D. *Introduction to the Study of Public Administration*. (New York: Macmillan Company, 1926, pp. xiii, 495.)

In the past twenty years we have had many studies in the field of public administration, some dealing with the general administration of different units of government, national, state and local, others with particular administrative services as taxation, health, etc., while still other studies, have considered special problems as the budget, personnel, purchasing, etc. But studies of the whole field of administration have been lacking in this period, and such earlier studies as existed, approached the problem entirely from the foundation of law.

Professor White shows the pioneer spirit by rejecting the traditional method of approach to the subject and by assuming that the proper approach is from the base of management rather than that of law. Equally original are his assumptions that administration is a single process with substantially uniform characteristics wherever observed, that it is still primarily an art, though tending to transform itself into a science, and that it is and will remain the heart of the problem of modern government. With these assumptions in mind the author undertakes to present a study of American administrative practice and experience which avoids the study of administration as municipal, state, or federal, as such, or the consideration of technical services or special problems. Administration is a single process, and, wherever found, exhibits certain common underlying problems of organization, finance, personnel and control. It is an analysis and criticism of these common problems and principles of administration that forms the basis of this study.

Principles and problems of organization and personnel furnish the subject of study for seventeen of the twenty-one chapters. Problems involved in the external relationship of the administration, the organization of the administrative machine, internal organization of departments, and reorganization of the administration are discussed, together with the principles of centralization and integration, their forms, methods and limits. Special attention is given to the problem of fiscal control as a phase of integration.

Approximately equal space is devoted to the personnel problem which is considered from the standpoints of historical background, morale, recruitment and technique of examinations, classification and salary standardization, promotion and efficiency records, discipline and removal, retirement systems, and the organization of public employees. The question of administrative rules and regulations is separately considered, while the problem of control of the administration is discussed from the point of view of the legislature, the electorate and the courts.

General conditions which have affected our administrative system and the main tendencies in the development of public administration are dealt with in a concluding chapter. Among the former may be mentioned the dominance of great constitutional and economic issues which crowded administration into the background, our freedom from the fear of international conflict, the social environment which has been unfavorable to organized bureaucracies, the control by the representatives of the rural areas, the low prestige value of public office, and the predominance of frontier conditions in many states. In a significant paragraph the trends of modern administration are summed up by the author as "the steady growth of the merit system with its implications of permanent employment and the provision of a career, the constant limitation of the unregulated authority of the local area, the rise of the principle of administrative supervision and unified leadership, the emergence of the specialist and the expert, the origin of significant economic and professional organizations of public employees, and the use of scientific inquiry into problems of government and administration."

Attractive features of the volume are a comprehensive bibliography, found in footnotes or at the end of chapters, the effective use of well-chosen quotations at the beginning of each chapter and in the text, and numerous charts and tables. Two appendices list the principal sources for the study of public administration and the union affiliations and local organizations of municipal employees of the City of Chicago.

The author's style is clear and readable; his treatment, original and realistic. The book is based on the best available material, excellently chosen, and re-enforced by the author's own observation and experience. To select from the twenty-one well written chapters the most important is difficult, but especially significant are the chapters on morale, employees' organizations, and trends of modern administration.

One of the most valuable features of the book is the suggestion of problems still unsolved; practically every chapter yielding one or more such topics. Professor White has blazed the way and marked out many fields for more extensive cultivation by students of public administration.

FRANK M. STEWART.

University of Texas.

Pollock, James K., Jr. *Party Campaign Funds*. (New York: Alfred A. Knopf, 1926, pp. xi, 296.)

Here is a book which is, so far as the reviewer knows, the only attempt to make a thorough examination of the subject presented in its title. All writers in the field of political parties pay some attention to the use of money in politics, but most of them are content to dismiss the topic with passing mention, or to note in the space of a chapter or two that party agencies do collect and spend money, huge sums of it, from certain sources and for certain purposes. The fact that so important a subject has hitherto been left almost undisturbed by serious scholars is not perhaps without significance; for while party campaign funds provide a most interesting topic for a general brief discussion, the subject is difficult to tie onto with any degree of definiteness or finality. Dr. Pollock has attempted a serious treatment of the problem, however, and his work fills a space of three hundred printed pages. The question whether he has succeeded in his discussion of the subject will doubtless be answered in different ways by critics of the book. It is the opinion of the reviewer here that the work, while well planned and very well written, is not entirely satisfactory.

The chief limitation on the book is to be found in the sources which the author was forced to consult and the materials which were made available for his use, and whose assistance he found it necessary to accept. Dr. Pollock depended largely upon "the party financial statements, national, state, and local, on file in public offices throughout the country." Now, there are laws, both state and federal, which provide that the party treasurer must file with the proper official an account of the income and disbursements of the party. But what is the value of these laws? Are they effective in gaining the ends for which they were passed? The answer is, they are not, for they are either ignored or evaded on every hand. Mr. Frank R. Kent says that "The sworn statements made in the states and to Congress never show the total receipts or the total expenditures"; and our author recognizes this fact in more places than one. He comments on the fact that there is no way of making more than a rough estimate of the sums expended even by the national committee, while the accounts kept by the state and county committees are non-existent, palpably fraudulent, or in such shape as to defy interpretation. Consult, for example, page 36, where the author points out obvious discrepancies in reports made by several state treasurers, ending with the observation that perhaps "the treasurers of the committees were merely modest." Or page 41, where the statement is made that "Our lack of information on the subject is due to the great difficulty of securing any complete figures representing the total disbursements of the county committees throughout any state." As a matter of fact, the two best chapters of the book, VII and VIII, are polemics against the federal and the state campaign funds laws, yet it is chiefly upon statements filed in accordance with the requirements of these laws that the author has relied for his sources. It seems to the

reviewer that these sources are neither accurate nor complete, that they do not merit the confidence or the consideration the author has bestowed upon them.

"These official documents have been supplemented by personal interviews with responsible party officials, as also with public men and women more or less intimately acquainted with this phase of practical politics" (p. vii). I submit that these do not constitute fair or accurate sources for information, for on the one hand the "responsible party official" will refuse to give information in any way damaging to himself or his party, while on the other "public men and women" will have little more than rumor to offer. The real data sought by the author may be had only from a man high in the councils of the party in his district, whether it be the county, the state, or the nation, and that these men guard their secrets well is shown by the negative results of various investigations of questionable party practices which have been conducted.

Let us accept the other sources mentioned—correspondence, "indirect inquiries," congressional committee investigations, magazines and newspapers, and histories and public documents. Some of them might be questioned in a longer review, but their importance does not warrant a discussion here; they are admittedly subsidiary to the main sources discussed above. Accept all these, and the fact remains that party campaign funds are a nebulous thing, and that they are destined so to remain in so far as Dr. Pollock's work is relied on for definite and definitive information. The reviewer attributes this to no fault of the author, but to the fact that such information is not available to the investigator, and perhaps not to anybody.

A second limitation which the work suffers results from the fact that the author is, shall we say overly optimistic? An example of this optimism: "Is it not better to have it clearly understood that all contributions are for the common good, and that no individual favors need be expected by anyone?" (p. 132). Another: "At the present time members of the party should be called upon to contribute . . . according to their ability, provided always that their motives are not sinister and that their contributions will not succeed in buying influence in legislative and administrative affairs" (p. 141). In justice to the author, it should be noted that he observes that as yet no "motive-measuring machine" has been invented. Yet another: the assertion that "nearly every politician will say that direct bribery of voters has practically disappeared" (p. 143). I daresay most politicians will make this admission! And yet a fourth: imagine a treasurer turning down a large donation to the party fund because the donor is prompted by impure motives in making the gift! Yet Dr. Pollock suggests (p. 136) that this might (or rather *should*) be done on occasion. This process might be continued almost indefinitely, but enough has been done to show that the author is apparently more concerned with *homo sapiens* and his political activities in the abstract than with the needs and requirements of practical politics.

Such is not the case throughout the book, however, for when the author finds himself upon solid ground he delivers himself of some good writing. Thus in Chapters VII and VIII the federal and state laws relating to campaign funds, though among the most prosaic of subjects, furnish sufficient stimulus to bring forth the best analyses of the book. Here the reader finds statements which he need not question, although here he finds also certain opinions which hark back to the characteristic mentioned in the preceding paragraph. The author must be complimented also on his appendix, which gives a summary digest of state laws relating to campaign funds and gives it in such a way as to permit the reader instantly to grasp the significance of the facts presented.

Perhaps the field covered by the book is not one which will permit of a studied, scholarly treatment such as Dr. Pollock has attempted. It may be that only one who is skilled and experienced in the game of politics is qualified to discuss the problem, and he only without citing references. Accepting this idea, one might at least explain why Frank R. Kent's few chapters on campaign funds, all very brief and entirely without documentation, are so much more convincing than Dr. Pollock's book, lengthy and heavily documented though it be.

ROSCOE C. MARTIN.

University of Texas.

Maeterlinck, Maurice; Mukerji, Dhan Gopal; and others; with introduction by Van Loon, Hendrik Willem. *What Is Civilization?* (New York: Duffield & Co., 1926, pp. 217.)

This is a symposium composed of several articles which first appeared in *The Forum*, with others added here *de novo*. Besides the Introduction, there are essays on the contributions to civilization of India, Africa, the Middle Ages, Greece, China, Ancient Egypt, and Ancient America; the two concluding essays are devoted to "Women and Modern Civilization" and "America's Democracy of Bad Manners." The contributors, in order, are: Hendrik Willem Van Loon, Dhan Gopal Mukerji, W. E. Burghardt Du Bois, Ralph Adams Cram, Paul Shorey, Chi-Fung Liu, Maurice Maeterlinck, Herbert Spinden, Ramsay Traquair, and Elizabeth Robins Pennell.

The question which sets the problem of the symposium is one whose answer has often been sought—and sought in vain. Nor is any definite answer here to be found. Indeed, one may very reasonably doubt whether an answer is in the last analysis possible, since the connotation of the term to be defined is so fluent and seems in a very real sense basal to its own formulation. The attempt to define civilization is pretty much on a par with the attempt to define reason—any definition threatens always to be largely circular. We may wish that we could state the meaning of civilization in set terms—but can we? If we could, would not civilization have to be something quite different from what it is? Perhaps, after all, it is just as well that the process will not accommodate itself to the molds of our fixed and formal definition!



Nevertheless, a reading of this very excellent symposium brings valuable returns. If one seeks here in vain for an answer to the question, What Is Civilization? one still finds some profound observations as to what it is not and also interesting expositions of various aspects of the complex process which we vaguely call by that name. One all-too-common fallacy is at least definitely exposed—namely, the double-headed assumption that civilization is a unique product of the occidental, and especially of the recent occidental, world and that it is something which can adequately be measured by its outwards symbols. From such superficiality and mental astigmatism this discussion fortunately may redeem us—if, indeed, we may be redeemed. As regards the second point, Hendrik Van Loon has hit the matter off in characteristic vein: "Civilization is essentially a question of the inner spirit. It is, of course, very nice if the stage of life has been well set, if the theater is not too draughty, if the seats are comfortable, the stage-hands well paid and contented, the dressing-rooms comfortable. All those incidental details will contribute to the physical well-being of the performers and in turn they will affect the performance itself. But the success or failure of the play will in the last analysis depend upon certain invisible qualities without which the entertainment will be merely a waste of time and money on the part of the audience and the managers." To discover what these "invisible qualities" are—there is the rub! They are like salt "which, according to an erudite philosopher, is 'something which you taste when it is not there.'" As to the proud assumption that "we moderns" are the only civilized folk, a sufficient exposé is found in the several statements concerning the contributions of China, Africa, Egypt, Greece, and India; while Miss Pennell's very clever emphasis upon our bad manners raises the question in what sense we may claim to be civilized at all.

*A propos* of this point Van Loon's positive contention (stimulating to the imagination if, indeed, not flattering to our self-esteem) is "that contrary to the generally accepted belief we are not 'modern' people, that we are not heirs to the glories of a noble past, but that we are the last off-shoot of prehistoric man and that civilization in the true sense of the word has not even begun." Not having been informed just what we are to understand by 'civilization' we are at a loss how precisely to evaluate this pronouncement; and the pessimist always has the advantage that the obvious and indisputable fact that the world is always somehow more or less seriously out of joint lies in easy support of his thesis. Even so, however, there remains enough truth in Van Loon's devastating claim to cast a pale, but rather vivid, shadow of doubt on the venerable and comforting tradition that in "us" the world with the burden of its destiny has at length finally arrived.

G. WATTS CUNNINGHAM.

University of Texas.

*The Fugger News Letters, 1568-1605* (Second Series), Edited by Victor von Klarwill, Translated by L. S. R. Byrne. (New York: G. P. Putnam's Sons, 1926, pp. 353.)

Although this volume carries the name of the Fuggers, it has very little to do with them. The contents are made up of the communications, true, fictitious, grotesque and prosaic, which the numerous agents and correspondents of the J. P. Morgan of the Sixteenth Century sent in to the home office bearing on all sorts of political matters, chiefly relating to Queen Elizabeth and the English during the period of the great struggle for world supremacy of the Spanish Crown. The impression one gathers from these correspondents scattered over Antwerp, Venice, Danzig, Lisbon, London, Cologne, Lyons, Madrid, Rome, Constantinople, Hamburg, Prague, Warsaw, Genoa, Dusseldorf, The Hague, Middelburg, Brussels, Paris, Frankfort, Strassburg, and Seville seems to be that they are all laboring under the dominating anxiety of "This Queen" as Elizabeth is constantly referred to. They also, and more so, live in fear and trembling of the royal pirate Drake and to a less extent, the Earl of Cumberland. Year by year one follows the doings of these fearless privateers and reads the timorous anxiety of the merchants for pepper, cochineal, and above all cargoes of gold and silver. In the background there looms rather hazily but ominously the war of the Netherlands with Philip, and less so the shadowy figures of Henry of Navarre and the Terrible Turks. The feeling of reality is ever present in the reports of the bankrupt Seville merchants because of Drake's ravages, and the repeated attacks on Cadiz, Lisbon, and Coruna, and one can understand the sigh of relief of the Lisbon correspondent on October 19, 1591,—"God be praised! Perhaps before receiving this letter you will have heard by special messenger of what has happened to our Armada and the fleet from New Spain, which wintered in Havana." The correspondent is joyful because out of seventy ships which left Havana, thirty have come home! No collection of contemporary documents could better present the atmosphere of this particular aspect of the Sixteenth Century than those gathered here. The question arises whether a selection from 36,000 pages of news, even though that selection could have been three or four times as large as this, gives a balanced picture of what was agitating the Sixteenth Century in the minds of the Fugger correspondents. As it stands this volume will serve more to boost English patriotism than to enlighten us on the place of England in the Europe of that time, which, after all, was comparatively unimportant. In fact the writer of the Preface feels that and lets his pen run away with him, doing damage to good taste and once to historical accuracy when he presents the merchant adventurers as free-traders! (p. xxiii).

One illuminating result appears from the perusal of this volume and that is the large extent to which English economic supremacy in the Seventeenth and Eighteenth Centuries is being founded in the Sixteenth Century through the accumulation of the large supplies of capital at

the time. And it is amusing to see these large supplies of capital coming from the activities of pirates who robbed the Spanish exploiters who despoiled the native Mexican and Peruvian "princes" who squeezed it out of their docile and laborious subjects.

But the book makes delightful reading and gives one a feeling of contact with the actors of the period similar to that which one gathers by reading an old newspaper recording events which have happened during one's childhood days. The sooner all of the Fugger News-Letters are published the better it will be for history.

MAX SYLVIVS HANDMAN.

University of Texas.

Staples, Thomas S. *Reconstruction in Arkansas*. (New York: Columbia University Press, 1923, pp. 445.)

In his treatment of the Reconstruction Period in Arkansas, Professor Staples has given us, in my opinion, a monumental work. It is a history of that period of upheaval and strife of which it seems not far from the truth to say, here is a work that supplies the last word upon the subject.

Moreover, I am, I believe, more or less familiar, from many years of study of the history of Arkansas in general, with the situation of affairs in the state, as the situation was during the period from 1862 to 1874. Of this I am very sure, nothing of any particular value on the subject of Reconstruction in this state has ever been written until now. And, thus, it is only fair to say that Dr. Staples has given us not only the last but the first word as well on this important period. At all events, the work is the first thorough and logical interpretation of the period that has been written.

In many respects the problems of Reconstruction in Arkansas were unlike those which were presented for solution in any of the other seceded states. Besides, the difficulties of conducting research, of the sort which Professor Staples has done, and at the time he did his work, were likewise difficult enough to have made the task seem, perhaps, to one less courageous, an impossible undertaking. In the face of these obstacles—the local peculiarities of the problem of Reconstruction in Arkansas and the almost impossible conditions under which the author did his research—the book is a revelation of originality and courageous endeavor.

The author has written a book of some 450 pages. In all those pages, nearly every sentence is a statement of facts, or a statement of conclusions based upon facts, which were gleaned from original and primary sources. From beginning to end, the narrative brings to light in nearly every line facts that have lain all these years scattered, unrelated and, to a degree, meaningless. The author has proven himself possessed of the skill and the art of the true historian. His skill is revealed by his unerring selection of significant facts; and his art, by his interpretation, in terms that grip and thrill the reader's interest,

of a multitude of facts, which, without the historian's touch, were lacking in practical and human interest.

The work traces the Reconstruction process from its earliest inception, in the mind of President Lincoln, to its final consummation under the control of Congress. How the state was won, brought back under the control of the Union, by the gradual invasion of the Federal Army is revealed in moving fashion. The insecure foundations of the first attempts to reorganize the civil authorities under President Lincoln's plan, with half the state still in the control of the Confederates; the irregularities of election; the unrepresentative character of conventions and legislatures of anything but the will of a few unscrupulous adventurers; the suppression, by intimidation and what not, of the native white population of Southern sympathies; the exploitation of the negro population by the Republican leaders as a political asset; the work of the Freedmen's Bureau; the relief which the Ku Klux Klan provided in the intolerable social situation—all these things, and many more too numerous here to mention, are told in a moving, thrilling manner.

The author has dealt with men, as well as movements, in an impartial and fearless manner. The reconstructionists are given credit for having done some things well. The work they did, for example, in the matter of providing for a system of public education is fully accredited to them. On the other hand, the looting of the public treasury, to the tune of millions, for their own private enrichment, is a matter which is traced straight to the guilty parties. The motives of men, who were the principal actors in the stirring and tragic events of the period, are analyzed and condemned or praised, as the facts seem to warrant. And only rarely, as it seems to me, has the writer done aught but justice to any of the conditions, or to any of the individual leaders, whose history he has told in such masterly fashion.

DALLAS T. HERNDON.

Secretary Arkansas History Commission.

Ellwood, Charles A. *The Psychology of Human Society*. (New York: D. Appleton & Co., 1925, pp. xvi, 495.)

In the sub-title to his book, *The Psychology of Human Society*, Dr. Ellwood states that the book is "an introduction to sociological theory." From a perusal of the contents of the book one would never guess it was intended to deal with sociology if the shrewdness of the author had not dictated the sub-title. Though he is a professor of sociology, and a writer of books in psychology, social ethics, and religious education, the author has yet to produce a book in sociology. What he chooses to designate "sociology" might more properly be called by one of the above titles.

Dr. Ellwood has simply added another book to the long list of so-called social psychology books. In this work, as in all others that have appeared under that caption, there is a maximum of individual psychology and a minimum—"a wee drap"—of social psychology. The sociology of human nature has yet to be written.

As for a scientific theory of group conduct, the author has none. He challenges and annihilates theories that have been properly squelched by others this long time. He presents a synthetic concoction of obsolete theories, platitudes, and moralizing.

The author, like most sociologists, still depends upon biological and psychological concepts to explain social processes. Sociologists who cannot write books without borrowing all their materials, methods, theories, and terminologies from the other sciences would do well to cease trying to write at all. If sociology has nothing to contribute in its own right in the way of data, a technique for collecting and presenting it, and a terminology of its own, it is about time it retired from the field and let the other sciences go their own way. The reviewer, however, believes that sociology has its own unique contribution to make in all these respects and that there are a few sociologists in this country who are succeeding in building up a sociology in terms of scientific investigation and research rather than be satisfied to have it remain a restatement of psychology, philosophy, and ethics.

There is less preaching in this book than in most of the other writings by the author. Apparently he forgot his text in this case. He never seems quite sure of himself or his subject nor in what direction it would be best to go. However, such terms as "humanitarianism," "social ethics," and "scientific morality," will be familiar to all persons who have read much from the pen of Dr. Ellwood.

The reviewer is inclined to doubt if the student of sociology will be greatly profited by a study of this book. As a matter of fact, the only value it could possibly have would be for the advanced student of sociological theory who would be interested in discovering what sociology "is not" rather than what "it is." The reviewer knows of no recent book better fitted for such an exercise than the one under discussion.

W. E. GETTYS.

University of Texas.

Gooden, Orville T. *The Missouri & North Arkansas Railroad Strike*. (New York: Columbia University Press, 1926, pp. 269.)

The Missouri & North Arkansas Railroad strike, called in February, 1921, and continued until December, 1923, created an extraordinary situation. The road traverses, for the most part, an isolated and rural region. Of that region, the road is practically the sole dependence for the highly important service of rail transportation. So dependent upon its continuous operation was the population along its route that a suspension of train service over the road was a calamity that threatened the wealth and health of the community. The strike was shortly followed by the complete suspension of freight and passenger trains. Almost immediately many of the people felt the pinch of want for the actual necessities of life. This latter circumstance, as Professor Gooden has pointed out in his book, made the strike on the Missouri & North



Arkansas exceptional. In a word, it brought the rights and interests of a third party, the public, squarely and emphatically into the issue.

In the collection of material for his book, the author seems to have done his work with highly commendable thoroughness. Nearly half of the book, a book of more than 250 pages, is filled with quotations from original sources. From the purely historical standpoint, there seems to be nothing of any great importance left to be said. And in the chapters, as in the first and last, where the writer tells the story and draws conclusions in his own words, the narrative runs smoothly enough. But much of the book is tedious, because the author, too frequently, has resorted to the expedient of introducing into the main text many direct and long-winded quotations. Naturally, perhaps, as a result of such a method of writing, there is too much repetition. The text seems patchy and, in a manner, disconnected.

While the author has clearly made a useful contribution to the history of the times by his painstaking research into the facts of a unique industrial conflict and the preservation of his findings in book form, my own feeling is that he has given us something merely useful when he might have given us something really great.

In the beginning of this review, I directed attention especially to the circumstance that, in this particular conflict between labor and capital, the rights and interests of the public were as clear-cut, perhaps, as those of the other two parties concerned. The author, too, calls attention to the circumstance at the outset. The fact is that in all our labor troubles the public is vitally concerned, though the realities of the public's rights and interests are oftener than not beclouded; so much so that the public, like the innocent bystander, suffers, as a rule, without joining the issue.

Now, as it seems to me, the author has missed an opportunity to write really a great book, in that he makes too little of this circumstance, and of the effect which it had on the ultimate settlement of the conflict. The situation seemed to afford the setting for a masterpiece, capable of performing miracles in the education of the public.

DALLAS T. HERNDON.

Secretary Arkansas History Commission.

*Documents Illustrating the History of Civilization in Medieval England, (1066-1500.)* Translated and Edited by R. Trevor Davies. (New York: E. P. Dutton & Co., 1926, pp. 413.)

In an effort to give the student a more realistic picture of the life of the English community during the Middle Ages, this collection of documents is herewith presented. It contains in full most of the important documents of English History like the Great Charter and it makes use of literary material for documentary purposes. Selections from the Domesday Book give a quantitative picture of the beginnings of English Society which can be compared with the figures of 1377 and 1381 recorded in the Poll Tax accounts. The chapters of the book

deal with the following subjects: The Norman Conquest, the Constitutional Struggle between the Barons and the Monarchy, the Catholic Church, Trade Guilds and Universities, the Age of the Crusades, which contain selections from the works of that nearly mythical figure for the average man, Roger Bacon, the Hundred Years War, the Black Death, the Decline of Medieval Civilization, the End of the Middle Ages. Two maps are also included, one of the distribution of the Benedictine Order and the other of the Eastern Mediterranean.

The author has included a considerable amount of economic material which should be of great help in giving English medieval history a more realistic touch than that usually gathered from constitutional struggles, war and monkish vicissitudes. One is particularly grateful for his inclusion of the Libel of English Policy which gives such an excellent survey of the commercial relations of that period. The inclusion of selections from the Paston Letters and the Stoner Papers is a most happy thought as it gives a picture of the small details of the life of the English upper class family. One might have wished for a similar picture of the life of the other social groups. A great help would also have been the inclusion of some old pictures illustrative of the costumes of the period and perhaps the manner of working of the artificers and the organization of the old towns. The only regret that the reviewer has is that the editor has not seen fit to modernize the spelling of the latter portions of his book. It does not give us any greater sense of reality to have to puzzle over the meaning of words and sentences; particularly so since the spelling of the period is no indication of the way in which the words were pronounced. As it stands, the immature student is apt to get the impression that the English spoken at the end of the Middle Ages is a quaint and curious tongue when all the curiosity is due to the lack of agreement among the writers of the time as to how the words should be spelled because so much was spoken and, proportionately, so little was written down. The book is a welcome addition to the list of documentary readings and with the aid of an English History text should prove of great service to the student and the teacher.

MAX SYLVIUS HANDMAN.

University of Texas.

Kluchevsky, V. O. *A History of Russia* (Volume IV). Translated by C. J. Hogarth. (New York: E. P. Dutton & Co., 1926, pp. vii, 382.)

The fourth volume of Professor Kluchevsky's monumental work, now presented in English translation, reveals the same painstaking research as the earlier volumes. It is, of course, a question of taste whether information, as encyclopedic as is provided in these pages, should not have been sifted with a view of parcelling some of it among footnotes—a method so ably applied in the late H. C. Lea's exhaustive works on the early Church; but, no doubt, Russian scholarship has its own peculiar ways, and we are far from saying that we should care to dispense with any of the results of the author's learning, even if his books are at

times rather hard reading. With a just sense of proportion Kluchevsky has devoted more than three-fourths of the present volume to Peter the Great. The picture of the great Emperor himself is probably the most complete canvass we have in English; and, indeed, the whole history of his reign is a study of the man. We are not only made acquainted with his personal characteristics, but we may follow step by step the process of that education in statecraft, which he derived almost wholly from experience blending with the ripening of his character and powers of observation. The very fullness of the author's treatment shows the comprehensiveness of Peter's statesmanship, which permeated every phase of the national life. And to those of us who do not read Russian the author has conferred a distinct service in presenting the various schools of opinion on the proper valuation of the Petrine reforms. The testing of the great builder's work came about in the period of weak rulers which followed him—a period which showed but little progress and yet no violent revulsion; in short, the foundation stones, laid by Peter, held in place. Moreover, the very dependence of these weaker rulers upon their instruments furthered the transition from a "one-man show" to that responsible hierarchy of officialdom, so indispensable to the operation of any unified modern government. As to the efficacy of the Petrine reforms, the author is perfectly aware of their limitations, showing us, indeed, that the practical exigencies of the moment led inevitably to hasty construction, while the human material at Peter's disposal was almost the worst imaginable. It was his aim, Kluchevsky says, to make Russia a great European Power. That, by main strength, as it were, he succeeded in doing.

There are some features of the history of the period that seem to receive an attention somewhat less than their due. Peter's foreign policy—which had so marked an effect upon the whole future course of Russian history—is dismissed with a dozen pages; and the twenty years of Elizabeth's hectic reign leave the impression of a hurried blur. But, on the whole, the author has given us the essential facts of Russian history from 1682 to 1762; and some matters, like the peasant problem, are reserved for topical treatment, rather than buried in the process of the narrative. The author's summaries at the close of some of his chapters are so helpful to the student that one might wish that this device had been more uniformly followed. One may get into his long paragraphs without a key, but it is hard, indeed, to get out of them without one.

The *mécanisme* of the translated edition is not quite all that it should be. The translator's style, apart from an awkward use of the possessive, is thoroughly worthy of its vehicle. The fine print, however, is not exactly alluring in the case of a work so erudite; and the index is beneath contempt.

T. W. RIKER.

University of Texas.

Slawson, John. *The Delinquent Boy*. (Boston: The Gorham Press, 1926, pp. viii, 477.)

Here is one more volume to add to the shelf where stand the many books dealing with correlations between delinquency and variables of every other conceivable kind. Its contribution to the sum of knowledge is small, yet it is a sound contribution, a durable brick in the slowly mounting structure of our understanding. By the use of standard statistical methods applied to data secured from three institutions for juvenile delinquents in New York City, the author shows correlations between criminal tendencies and a number of other factors, such as intelligence, psychoneurotic responses and social environment. He makes no unreasonable claim for the validity of his conclusions. They are impartially recorded as the result obtained by the application of a certain technique of comparison to certain objective facts. The whole procedure is thoroughly scientific.

However, Dr. Slawson's book, in common with many other scientific works, lacks readableness. No one not already intensely interested in the subject would tolerate the interminable sentences with their cumbersome phraseology. There is no excuse for dullness in a scientific book. Its writer, as compared with the litterateur, has the great advantage of always having something to say. He should not forfeit that advantage by saying it unattractively.

CARL M. ROSENQUIST.

University of Texas.

Princess Cantacuzène. *Revolutionary Days: Recollections of Romanoffs and Bolsheviks, 1914-1917*. (New York: Charles Scribner's Sons, second edition, 1926, pp. 411.)

This book, now appearing in a second edition, has well deserved more than a passing interest. The authoress, a granddaughter of General Grant and wife of a Russian nobleman of distinguished family, had enjoyed contacts with political and military circles which enabled her to draw a clear and convincing picture of the last days of Czarism as well as the impressions produced by the Revolution. Much of her story (especially the "occult" influence at the dying court) has, of course, become familiar through the pens of other actors in the drama, and a good many incidents, elsewhere recounted, receive new confirmation in these pages; but a special tribute may be paid to this author for a certain inborn nobleness of character which enabled her to perceive the finer qualities of character where they existed as well as to penetrate the dross. She is, withal, unsparing in her portrayals, whether of the Czarina or Rasputin, the neurotic Kerensky or the clumsy patriot, Korniloff; but she writes without apparent bitterness, even if her analyses are somewhat lacking in reflection. It is interesting to note that she has much to say in praise of Kerensky at first (he alone seems to have held the mob in check during the first crisis of the Revolution), but believes that he suffered rapid degeneration both in body and in

mind; one may wonder, perhaps, if he was not simply elevated to a position for which he was morally unfitted from the beginning. Some characters, on the other hand, like the czar's minister, Bark, appear as bright stars of devotion in a black void of political instability and moral turpitude; while the picture of the little noblewoman of 85, who preferred to stay at Petrograd and die, if need be, with her art-treasures, is only one of a number of episodes which go to prove that the true story of a revolution is as dramatic as any fancy of the imagination.

Perhaps the most valuable (because most personal) as well as the most entertaining parts of the book are the graphic pages devoted to the escape of the Princess and her husband from Russia after the uprising of the Bolsheviks. Singular, indeed, was the good fortune, which piloted them through so many perils (one may almost feel that the Princess' talisman had some mystic power, after all!), but, between the lines, one may gather that the Cantacuzènes were but reaping the reward of an esteem, justly earned even among their humblest acquaintances. No doubt, too, there is a certain innate good-nature in the average Russian, which prevented his revolution from becoming quite so consistently savage as one might have expected. But the chaos of those days was almost unbelievable. "We Russians like the longest way round," the author quotes a Russian colonel as saying, "and lots of messing, even to accomplish a little thing." It was no "little thing," as it turned out, but the transition to the new "czarism" of Lenin was an agonizing "mess," while it lasted. If one wants the gorier details, however, one does not find them in these pages. But the Cantacuzènes left Russia none too soon.

The Princess' story is simply told, without scholarly pretense or literary varnish; indeed the story does but "tell itself." Its historical value lies both in its close observation and its evident sincerity, while the vividness of the scenes portrayed should make it as fascinating to the general reader as to the student.

T. W. RIKER.

University of Texas.

Patterson, C. P.; Evans, A. W., and Simmons, J. P. *American Citizenship*. (New York: Rand McNally & Co., 1927, pp. viii, 367.)

This work on American Citizenship is an elementary text in civics, being intended primarily for use in junior high schools. The authors point out in the preface that an attempt has been made to emphasize both local or community interests and a study of the national Constitution and governmental system.

Many of the recent books in the field of elementary civics have over-emphasized the problems of community life and of society with an inadequate consideration of the governmental machinery and organization and without showing the relation of the citizen to the government. After a consideration of the home, the school, and the commu-



nity, the authors of this book have attempted to show the student his place in the social structure; from this they proceed to the study of the government under which he lives, the consideration of the Constitution being especially well done. Brief consideration is also given to the relations of our government with other nations or our place in world affairs.

While the book has substantial body and facts it is so presented that it can be understood and used by elementary students.

C. M. KNEIER.

University of Texas.